

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 5:21-HC-2145-BO

GERALD WAYNE TIMMS,)
)
 Petitioner,)
)
 v.)
)
U.S. ATTORNEY GENERAL,)
)
 Respondent.)

ORDER

On July 14, 2021, petitioner, a civilly committed person proceeding *pro se*, petitioned for a writ of habeas corpus under 28 U.S.C. § 2241 [D.E. 1]. The matter is before the court for an initial review under 28 U.S.C. § 2243. The matter is also before the court on petitioner’s motions to amend the petition [D.E. 3] and for an “emergency/expedited review hearing” [D.E. 5].

BACKGROUND

Petitioner is civilly committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4248(d). See United States v. Timms, No. 5:08-HC-2156-BO, [D.E. 134] (E.D.N.C. Oct. 18, 2012). On May 27, 2015, while he was civilly committed, petitioner was indicted for possession of contraband in prison (weapon), in violation of 18 U.S.C. § 1791. See United States v. Timms, No. 5:15-CR-00169-BO, [D.E. 1] (E.D.N.C. May 27, 2015). On May 11, 2016, following a bench trial, the court found petitioner guilty of the charge in the indictment. See Timms, No. 5:15-CR-00169-BO, [D.E. 80]. On August 9, 2016, the court sentenced petitioner to 30 months’ imprisonment. See Timms, No. 5:15-CR-00169-BO, [D.E. 90]. On April 24, 2017, the United

States Court of Appeals for the Fourth Circuit affirmed petitioner's conviction and sentence. See United States v. Timms, 685 F. App'x 285 (4th Cir. 2017) (per curiam) (unpublished).

On August 15 and October 26, 2017, petitioner filed motions in his civil commitment proceedings requesting clarification as to whether his civil commitment under § 4248 ran with his criminal sentence. See Timms, No. 5:08-HC-2156-BO, [D.E. 230, 235]. Petitioner argued that his civil commitment under § 4248 ceased when he was criminally convicted and began serving an active criminal sentence, and that, upon expiration of his criminal sentence on July 31, 2017, and in the absence of a new certification filed under § 4248(a), he was no longer being lawfully held in the custody of the Federal Bureau of Prisons ("BOP"). See id. On November 17, 2017, the court denied petitioner's motions for clarification and found "no basis on which to conclude that Mr. Timms' § 4248 civil commitment terminated at or after his recent criminal conviction or that he is not today in the lawful custody of the Bureau of Prisons." Timms, No. 5:08-HC-2156-BO, [D.E. 239]. Petitioner did not appeal the court's order.

On October 17, 2019, petitioner was indicted for two counts of possession of contraband in prison (weapon), in violation of 18 U.S.C. § 1791. See United States v. Timms, No. 5:19-CR-00428-FL, [D.E. 1] (E.D.N.C. Oct. 17, 2019). On February 18, 2020, after a trial by jury, petitioner was found guilty of both counts. See Timms, No. 5:19-CR-00428-FL, [D.E. 49]. On June 10, 2020, petitioner was sentenced to 30 months' imprisonment on each count to be served concurrently. See Timms, No. 5:19-CR-00428-FL, [D.E. 74]. On March 3, 2021, the United States Court of Appeals for the Fourth Circuit affirmed petitioner's conviction and sentence. See United States v. Timms, 844 F. App'x 658 (4th Cir. 2021) (per curiam) (unpublished).

In the instant petition for a writ of habeas corpus, petitioner "challenges the statutory construction and application" of § 4248 and alleges that § 4248 is "unconstitutional on its face and

as applied.” Pet. [D.E. 1] 1. Petitioner contends § 4248, and the BOP’s implementation of § 4248, violates the due process, ex post facto, and equal protection clauses of the United States Constitution, as well as statutory and congressional intent for § 4248 to be civil and not punitive. See Pet. at 1–8; Am. Pet. [D.E. 3] 1–15. Petitioner contends that his commitment under § 4248 ceased when he was criminally convicted, and that, upon the expiration of his two criminal sentences, and in the absence of new certification filed under § 4248(a), the BOP illegally stayed his release. See Pet. at 3–5; Am. Pet. at 2-4. Petitioner also challenges his conditions of confinement and contends that he should not be subjected to the BOP’s rules and policies because they are punitive and not designed for civil detainees. See Pet. at 2–5; Am. Pet. at 4–14. Petitioner alleges in July 2021, he was placed under quarantine in the Special Housing Unit (“SHU”) and was denied regular commissary privileges. See Am. Pet. at 6–7. Petitioner seeks declaratory and injunctive relief, including a court order finding that § 4248 is unconstitutional and to be released. See Pet. at 6–7; Am. Pet. at 14–15.

DISCUSSION

The court begins with petitioner’s motion to amend the petition [D.E. 3]. The court grants the motion as a matter of course. See Fed. R. Civ. P. 15(a)(1); Scinto v. Stansberry, 507 F. App’x 311, 312 (4th Cir. 2013).

The court now conducts an initial review of the petition and amendment. The court begins with petitioner’s claim that his § 4248 civil commitment terminated when he was criminally convicted, and that, upon the expiration of his two criminal sentences, and in the absence of new certification filed under § 4248(a), the BOP illegally stayed his release. A habeas corpus application allows a petitioner to challenge the fact, length, or conditions of custody and seek immediate release. See, e.g., Preiser v. Rodriguez, 411 U.S. 475, 484–85 (1973). Civil committees

may file a habeas corpus petition pursuant to § 2241. See 28 U.S.C. § 2241; United States v. Tootle, 65 F.3d 381, 383 (4th Cir. 1995). However, a civil committee must exhaust all available remedies before pursuing relief under § 2241. See Timms v. Johns, 627 F.3d 525, 533 (4th Cir. 2010); Bussie v. United States, No. 5:15-HC-2149-FL, 2015 WL 12910636, at *2 (E.D.N.C. Nov. 3, 2015). Although petitioner filed similar motions in his civil commitment proceedings related to his 2016 criminal conviction, petitioner did not appeal the court's order denying his motions. See Timms, No. 5:08-HC-2156-BO. Moreover, petitioner has not filed anything in his civil commitment proceedings related to his 2020 criminal convictions. See id. Thus, the court dismisses the claim for petitioner's failure to exhaust his available remedies in his civil commitment proceedings. See Timms, 627 F.3d at 533; see also Green v. United States, No. 5:11-HC-2254-D, 2012 WL 2367390, at *1 (E.D.N.C. June 21, 2012). Alternatively, the court dismisses the claim for the same reasons set forth in his civil commitment proceedings. See Order Timms, No. 5:08-HC-2156-BO, [D.E. 239].

As for petitioner's claims challenging the facial validity of the Adam Walsh Act, the Supreme Court and the Fourth Circuit have upheld the constitutionality of the Adam Walsh Act. See United States v. Searcy, 880 F.3d 116, 124 (2018); United States v. Comstock, 560 U.S. 126, 149-50 (2010); United States v. Timms, 664 F.3d 436, 454-56 (4th Cir. 2012), cert. denied, 568 U.S. 930 (2012); Matherly v. Andrew, 817 F.3d 115, 119 (4th Cir. 2016). Thus, the court dismisses these claims.

Petitioner's remaining claims challenge his conditions of confinement. A habeas petition is not the proper remedy to challenge conditions of confinement. See, e.g., Nelson v. Campbell, 541 U.S. 637, 643 (2004); Muhammad v. Close, 540 U.S. 749, 750-51 (2004) (per curiam); Preiser v. Rodriguez, 411 U.S. 475, 494, 498-99 (1973); Ferch v. Jett, No. 14-CV-1961(SRN/TNL), 2015

WL 251766, at *4–5 (D. Minn. Jan. 20, 2015) (unpublished); Yagman v. Johns, No. 5:08-HC-2103-D, 2009 WL 6669325, at *2 (E.D.N.C. Feb. 12, 2009) (unpublished), aff'd, 328 F. App'x 280 (4th Cir. 2009) (per curiam) (unpublished). Thus, the court dismisses these claims.

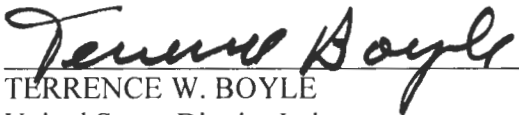
Alternatively, to the extent that petitioner claims he should not be subjected to the BOP's rules and policies, placement of a civil detainee "in a prison, subject to the institution's usual rules of conduct," does not per se signify punishment. Allison v. Snyder, 332 F.3d 1076, 1079 (7th Cir. 2003). "Disciplinary measures that do not substantially worsen the conditions of confinement of a lawfully confined person are not actionable under the due process clause, . . . regardless of whether the confinement is criminal or civil." Miller v. Dobier, 634 F.3d 412, 414–15 (7th Cir. 2011) (citation omitted). "Put another way, unless the deprivation of liberty is in some way extreme, then the Constitution does not require that a prisoner be afforded any process at all prior to deprivations beyond that incident to normal prison life." Deavers v. Santiago, 243 F. App'x 719, 721 (3d Cir. 2007) (unpublished) (emphasis omitted). Petitioner does not allege that he was subjected to any extreme deprivation. Instead, petitioner argues that the BOP's rules and policies should not be applicable to civilly committed persons because they are punitive. The court has already rejected petitioner's argument for failure to state a claim. See, e.g., Timms v. Holland, No. 5:17-hc-02113-BO, [D.E. 8] (E.D.N.C. Mar. 29, 2019) (unpublished), aff'd, 776 F. App'x 809 (4th Cir. 2019) (per curiam) (unpublished). Thus, the court dismisses the claim.

CONCLUSION

In sum, the court GRANTS petitioner's motion to amend [D.E. 3], DISMISSES petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2241, and DENIES AS MOOT petitioner's motion for an "emergency/expedited review hearing" [D.E. 5]. The court

DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). The clerk shall close the case.

SO ORDERED, this 11 day of March 2022.


TERRENCE W. BOYLE
United States District Judge