

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JASON MCDANIEL,

Petitioner,

MEMORANDUM and ORDER

v.

07-C-23-S

RICARDO MARTINEZ,

Respondent.

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 claiming that he has been denied early release. Respondent filed his response on February 27, 2007. Petitioner filed his traverse on March 22, 2007.

FACTS

Petitioner Jason McDaniel is currently incarcerated at the Federal Correctional Institution, Oxford, Wisconsin (FCI-Oxford). Petitioner was deemed provisionally eligible for participation in the Residential Drug Abuse Program (RDAP) which would entitle him to early release.

Petitioner began participating in RDAP on March 24, 2006. On June 20, 2006, RDAP staff again determined petitioner was provisionally eligible for early release.

On September 6, 2006 it was determined that petitioner was not eligible for early release because he had been convicted of Aggravated Battery in Illinois and was sentenced to four years incarceration to run concurrent with his federal sentence.

On December 22, 2006 petitioner filed an administrative remedy. His request was denied on January 5, 2007. On January 16, 2007 petitioner appealed to the Regional Director. That appeal was denied on February 2, 2007. In his traverse petitioner states that his appeal of the Regional Director's decision has been filed but not decided.

Petitioner has not fully exhausted his administrative remedies concerning the denial of his early release.

MEMORANDUM

Respondent moves to dismiss petitioner's petition for failure to exhaust his administrative remedies. An inmate must exhaust administrative remedies before he can file a petition for a writ of habeas corpus. Clemente v. Allen, 120 F.3d 703, 705(7th Cir. 1997).

Petitioner has failed to exhaust his administrative remedies. Accordingly, his petition for a writ of habeas corpus must be dismissed without prejudice for his failure to exhaust his administrative remedies.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed without prejudice for his failure to exhaust his administrative remedies. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED without prejudice.

Entered this 26th day of March, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge