

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

DANIEL MARTIN,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

ORDER

10-cv-391-slc¹

Petitioner Daniel Martin has brought a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in which he contends that the Federal Bureau of Prisons has concluded incorrectly that he is not eligible for early release under 18 U.S.C. § 3621(e) for completing a drug treatment program. In an order dated February 3, 2011, I informed petitioner that he could not raise this claim in a habeas petition because success on his claim would not entitle him to earlier release, as required by Richmond v. Scibana, 387 F.3d 602, 605 (7th Cir. 2004). Rather, if petitioner is correct that he is eligible for early release, this would simply mean that the bureau could be ordered to *consider* petitioner for early release. The

¹ I am exercising jurisdiction over this case for the purpose of this order.

statute does not require the bureau to release prisoners who complete the drug program; it simply says that a sentence “may be reduced” by the bureau in that circumstance.

In accordance with cases such as Moran v. Sondalle, 218 F.3d 647, 649 (7th Cir. 2000), and Pischke v. Litscher, 178 F.3d 497, 500 (7th Cir. 1999), I gave petitioner an opportunity to inform the court that he wished to convert the case into a civil action. Although I gave petitioner a February 24 deadline, he has not responded to the court’s order. Accordingly, I am dismissing the petition for his failure to show that he is in custody in violation of federal law.

ORDER

IT IS ORDERED that Daniel Martin’s petition for a writ of habeas corpus under 28 U.S.C. § 2241 is DENIED for his failure to show that he is in custody in violation of federal law. The clerk is directed to enter judgment in favor of respondent and close this case.

Entered this 24th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge