

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

MARK R. PETERSEN,

Petitioner,

ORDER

v.

03-C-0088-C

PHIL KINGSTON, Warden, Columbia
Correctional Institution,

Respondent.

Mark R. Peterson, an inmate confined at the Columbia Correctional Institution in Portage, Wisconsin, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner contends that while he was incarcerated at the Supermax Correctional Institution, he was subject to a “straight time” program segregation policy that deprived him of the ability to earn good time credit. Petitioner contends that Supermax’s straight-time policy violates the Settlement Agreement approved by this court in Jones ‘el v. Berge, 00-C-0421-C, because it constitutes an oppressive condition of confinement to which other maximum security inmates are not subject. Petitioner seeks \$1,000 for pain and suffering. He has paid the five dollar filing fee.

Petitioner’s claim is not properly brought as a habeas corpus action. A prisoner who claims he is entitled to damages as a result of his exclusion from a prison program (in this case, a “step” program that would have allowed petitioner the opportunity to earn his way

out of segregation through good conduct), must use 42 U.S.C. § 1983. Moran v. Sondalle, 218 F.3d 647, 652 (7th Cir. 2000). Habeas relief under § 2254 is the appropriate remedy only when a prisoner attacks the fact or duration of his custody. See 28 U.S.C. § 2254(a); Sylvester v. Hanks, 140 F.3d 713, 714 (7th Cir. 1998). Petitioner is not attacking his underlying convictions or sentences or even the administrative decision that led to his placement in program segregation in the first place, but is seeking money damages for what he contends were oppressive conditions of confinement. Accordingly, the petition must be dismissed.

Although petitioner may refile his petition as a § 1983 action, he would be foolish to do so. To state a cognizable cause of action under § 1983, a plaintiff must assert facts which, if true, establish the violation of a constitutional right. Petitioner's allegations in his petition do not rise to that level. Petitioner did not have a constitutionally-protected interest in participating in a program that only *might* have hastened his release from segregation and thereby stopped the erosion of his mandatory release date. See Zimmerman v. Tribble, 226 F.3d 568, 572 (7th Cir. 2000); Higgason v. Farley, 83 F.3d 807, 809-10 (7th Cir. 1996). Finally, for reasons explained in the attached memorandum, this court cannot

entertain individual complaints from inmates who complain that conditions at Supermax violate the settlement agreement approved by this court in Jones 'el v. Berge, 00-C-0421-C.

ORDER

Accordingly, IT IS ORDERED that Mark Peterson's petition for a writ of habeas corpus is DISMISSED.

Dated this 28th day of February, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge