

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

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OMAR L. BROWN, (NMN),

Petitioner,

ORDER

v.

05-C-358-C

STEPHEN HOBART, Warden,  
Federal Correctional Institution,  
Oxford,

Respondent.  
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In an order dated June 24, 2005, I reviewed petitioner's pleading in this case and determined that although it had been filed as a § 2241 habeas corpus petition, it raised a claim that must be raised in a civil action brought pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). I told petitioner that it was up to him to notify the court no later than July 15, 2005, whether he wished his action treated as a habeas corpus action in which case it would be dismissed or as a Bivens action, in which case he was to submit a trust fund account statement so that I could assess him an initial partial payment of the fee for filing his action. On June 30, 2005, petitioner filed a document dated June 27, 2005, reiterating his concerns that his constitutional rights were violated when

prison officials discriminated against him because he is black and his wife is white by placing him in lockdown and falsely accusing him of receiving drugs from his wife during a prison visit. In this document, petitioner seems to suggest that his request for an order releasing him from lockdown status includes habeas corpus relief. In particular, he asks that he be credited with good time he could not earn during the time he was held in lockdown.

Because it was not clear whether petitioner prepared his June 27 document before he received the June 24 order or in response to it, I have waited until the July 15, 2005 deadline before addressing this action further. Petitioner has not filed anything more with the court. Therefore, I construe his June 27 submission as a response to the June 24 order and a confirmation of petitioner's decision to have his lawsuit treated as a petition for a writ of habeas corpus.

As noted above, petitioner's claim is that prison officials discriminated against him on the basis of his race by falsely accusing him of receiving drugs from his wife during a visit. Even if petitioner were able to prove his allegations, he would not be entitled to release from prison or to any change in the length of his sentence. As the Court of Appeals for the Seventh Circuit explained in Hadley v. Holmes, 341 F.3d 611, 664-665 (7th Cir. 2003),

In order to bring a habeas corpus action, a prisoner must be "in custody" pursuant to the conviction or sentence being challenged. Although [habeas corpus] is the appropriate vehicle when prison officials have revoked good-time credits once earned or lowered a previously established credit-earning classification, [petitioner] is not complaining that any benefit

already conferred has been taken away. [Petitioner] argues that his ability to earn discretionary credits in the future was hurt . . . and we have held that [a civil action under Bivens or § 1983] must be used where a claim, if decided favorably to the prisoner, at best might accelerate the accrual of good time and hasten the prisoner's release.

(Citations omitted.) Petitioner's circumstance in this case is similar to the petitioner's in Hadley. He does not allege that because of his placement in lockdown he was deprived of good time credits he has already earned. He wants this court to find that if he had not been placed in lockdown, he would have been entitled to earn good time credits. His claim is proper in a civil action. Zimmerman v. Tribble, 226 F.3d 568, 571-72 (7th Cir. 2000); Higgason v. Farley, 83 F.3d 807, 809-10 (7th Cir. 1995) (denying opportunity to earn good time does not inevitably affect duration of sentence). It cannot be brought in a habeas corpus action. Therefore, this petition will be dismissed. If petitioner wishes to pursue his claim, he will have to do so in a civil action brought pursuant to Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

#### ORDER

IT IS ORDERED that petitioner Omar L. Brown's petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 is DISMISSED for petitioner's failure to show that

he is in custody in violation of the Constitution or laws of the United States.

Entered this 22nd day of July, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge