

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Justin Clayburn v. Jason Gunther

Clayburn · No. CV-25-00967-PHX-MTL · Decided April 14, 2026

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA Justin Clayburn, No. CV-25-00967-PHX-MTL Petitioner, ORDER v. 12 Jason Gunther, 13 Respondent. 14 15 Before the Court is Petitioner Justin Clayburn’s Petition (Doc. 1) and United States 16 Magistrate Judge Michael T. Morrissey’s Report and Recommendation (“R&R”) (Doc. 17 15).

The R&R recommends that the Court deny and dismiss the amended petition without 18 prejudice for failure to exhaust administrative remedies. On an alternative basis, the R&R 19 recommends dismissal of the Petition on the merits. 20 The Magistrate Judge advised the parties that they had fourteen days to file 21 objections to the R&R and that failure to file timely objections could be considered a 22 waiver of the right to obtain review of the R&R.

See *United States v. Reyna-Tapia*, 328 23 F.3d 1114, 1121 (9th Cir. 2003). Neither party filed objections, which relieves the Court 24 of its obligation to review the R&R. See *Reyna-Tapia*, 328 F.3d at 1121; *Thomas v. Arn*, 25 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not... require any review at all... 26 of any issue that is not the subject of an objection.”); Fed.

R. Civ. P. 72(b)(3) (“The district 27 judge must determine de novo any part of the magistrate judge’s disposition that has been 28 properly objected to.”). 1 The Court has nonetheless reviewed the R&R and finds that it is well-taken. 2|| Petitioner has failed to exhaust his administrative remedies, and he fails to satisfy his || burden that doing so would be futile.

As for the merits, the Court agrees with the R&R that the plain language of 18 U.S.C. § 3632(d) (4)(A) forecloses Petitioner’s argument because || the triggering date for earned time credits is successful participation in “evidence-based 6 || recidivism reduction programming or productive activities.” (Doc. 15 at 4 (quoting 18 U.S.C. § 3632(d)(4)(A).) 8 The Court will accept the R&R in its entirety.

See 28 U.S.C. § 636(b)(1) (stating || that the district court “may accept, reject, or modify, in whole or in part, the findings or 10 || recommendations made by the magistrate”); Fed. R. Civ. P. 72(b) (3) (“The district judge 11} may accept, reject, or modify the recommended disposition; receive further evidence; or 12 || return the matter to the magistrate judge with instructions.”).

13 IT IS ORDERED that the R&R (Doc. 15) is ACCEPTED. 14 IT IS FURTHER ORDERED Petitioner’s petition (Doc. 1) is DENIED and) DISMISSED WITHOUT PREJUDICE. 16 IT IS

FURTHER ORDERED directing the Clerk of the Court to enter judgment ☐ accordingly and terminate this case. 18 Dated this 14th day of April, 2026. 19 Wichaël T. Sihurde Michael T. Liburdi 22 United States District Judge 23 24 25 26 27 28 -2-

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