

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Marlon Jermaine Johnson v. E. Ricolcol, Warden

Johnson v. Ricolcol · No. EDCV 24-1711 CAS (AGR) · Decided December 16, 2025

SUMMARY

The United States District Court for the Central District of California accepted the magistrate judge’s findings and recommendation in a federal habeas corpus action under 28 U.S.C. § 2241. The court held that the petitioner failed to exhaust Bureau of Prisons administrative remedies and that his expired loss-of-commissary-privileges claim was not cognizable in habeas. The court granted the respondent’s motion to dismiss and dismissed the action without prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Christina A. Snyder
JURISDICTION	United States District Court for the Central District of California
DECIDED	December 16, 2025
DOCKET	EDCV 24-1711 CAS (AGR)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241. Respondent moved to dismiss for failure to exhaust administrative remedies, and the magistrate judge issued a report and recommendation recommending disposition of the petition. The district court conducted de novo review of the objected-to portions, accepted the report and recommendation, granted the motion to dismiss, denied the petition, and dismissed the action without prejudice.
STANDARD OF REVIEW	De novo review of the portions of the magistrate judge's report and recommendation to which objections were made.
PRECEDENTIAL VALUE	Unpublished district court order; limited persuasive value.
PARTIES	Marlon Jermaine Johnson v. E. Ricolcol, Warden

TOPICS

- federal habeas corpus
- exhaustion of remedies
- post-conviction relief
- motions to dismiss

PRACTICE AREAS

federal habeas corpus

prisoner litigation

administrative exhaustion

QUESTIONS PRESENTED

1. Whether the petition should be dismissed because Johnson failed to exhaust available Bureau of Prisons administrative remedies.
2. Whether the challenge to the loss of commissary privileges stated a cognizable claim for habeas relief under 28 U.S.C. § 2241.

HOLDINGS

1. Johnson did not exhaust his administrative remedies because his BP-11 was rejected on procedural grounds and was submitted more than ten months after the applicable deadline.
2. The expired loss of commissary privileges did not state a cognizable claim for habeas relief under 28 U.S.C. § 2241.

KEY QUOTATIONS

“A rejection on procedural grounds “‘is not the same as a denial, which is a decision on the merits.’” (at 1)

FACTUAL BACKGROUND

Johnson challenged the loss of commissary privileges from March 3 through April 1, 2024. The administrative-record sequence showed that he filed a BP-9 at the second level on March 20, 2024, but the court found that the required BP-10 and BP-11 steps were not timely completed. Johnson asserted that paperwork for a BP-10 was lost after his transfer, and disclosed that he submitted a BP-11 on June 5, 2025; prison officials rejected and returned it because there was no record of a BP-10 submission.

PROCEDURAL HISTORY

Respondent moved to dismiss the § 2241 petition for failure to exhaust administrative remedies. After the magistrate judge issued a report and recommendation, Johnson filed objections stating that he had submitted a final-level BP-11 appeal in June 2025; the district court reviewed the objections and response de novo, accepted the report and recommendation, granted dismissal, denied the petition, and dismissed the action without prejudice.

DISPOSITION

dismissed

CASES CITED

- Smith v. Lepe, 2025 U.S. Dist. LEXIS 195655, *8 (C.D. Cal. Aug. 25, 2025)
- Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)
- Hernandez v. Lepe, 2025 U.S. Dist. LEXIS 197721, *8 (C.D. Cal. Aug. 18, 2025)

OPINION

1 O 2 3 4 5 6 7 IN THE UNITED STATES DISTRICT COURT 8 FOR THE CENTRAL
DISTRICT OF CALIFORNIA 9 10 11 MARLON JERMAINE JOHNSON, NO. EDCV 24-1711
CAS (AGR) 12 Petitioner, ORDER ACCEPTING FINDINGS AND RECOMMENDATION OF
13 v. MAGISTRATE JUDGE 14 E. RICOLCOL, Warden, 15 Respondent. 16 17 18 Pursuant to 28
U.S.C. § 636, the Court has reviewed the Petition for Writ of 19 Habeas Corpus (“Petition”), the
other records on file herein, the Report and 20 Recommendation of the United States Magistrate
Judge (“Report”), the 21 Objections and the Response.

Further, the Court has engaged in a de novo 22 review of those portions of the Report and
Recommendation to which objections 23 have been made. The Court accepts the findings and
recommendation of the Report. 24 In the Objections, Petitioner discloses for the first time that he
submitted a 25 BP-11 form at the final level on June 5, 2025, after Respondent filed the motion to
26 dismiss the Petition for failure to exhaust administrative remedies on April 21, 27 28 1 2025.

(Obj., Dkt. No. 13 at 3.)¹ On June 11, 2025, the BP-11 was rejected and 2 returned to Petitioner
because there was no record of Petitioner submitting a BP- 3 10 at the third level. (Id.) A rejection
on procedural grounds “‘is not the same as 4 a denial, which is a decision on the merits.’” Smith v.
Lepe, 2025 U.S. Dist. 5 LEXIS 195655, *8 (C.D. Cal. Aug. 25, 2025) (citation omitted).

Unlike a denial, a rejection on procedural grounds does not exhaust administrative remedies. Id. at
6 *8. Therefore, Petitioner did not exhaust his administrative remedies. 7 Petitioner claims that he
submitted a BP-10 but after “transferring to a 8 different facility, the Petitioner’s paperwork was
lost by the BOP.” (Obj. at 1.)

The 9 records indicate Petitioner submitted the BP-9 at the second level on March 20, 10 2024
with the Warden’s response due by April 9, 2024. (Exh. D to Lam Decl., 11 Dkt. No. 6-1 at 78.)
The BP-10 had to be filed within 20 calendar days of the 12 Warden’s response to the BP-9 or the
time for response had lapsed. 28 C.F.R. § 13 542.15(a). Assuming Petitioner actually submitted a
timely BP-10 by April 29, 14 2024, the Regional Director’s response would have been due within
30 calendar 15 days (May 29, 2024) plus a possible 30-day extension of time (June 28, 2024).

16 28 C.F.R. § 542.18. Petitioner’s BP-11 would have been due within 30 calendar 17 days, or no
later than July 29, 2024. 28 C.F.R. § 542.15(a). According to the 18 attachment to the Objections,
Petitioner submitted a BP-11 on June 5, 2025, over 19 10 months late. Petitioner does not provide
any explanation for this lengthy 20 delay.

The court declines to waive the exhaustion requirement under these 21 circumstances. See Laing
v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) 22 (holding courts have discretion to waive
exhaustion requirement when 23 administrative remedies would be inadequate, not efficacious,
futile, cause irreparable injury, or void). 24 Alternatively, Respondent is correct that Petitioner’s

challenge to the loss of 25 commissary privileges during March 3 – April 1, 2024, which has long since expired, does not state a cognizable claim for habeas relief under 28 U.S.C. § 2241. Page citations are to the page numbers assigned by CM/ECF in the header of the document.

1 | 2241. See *Hernandez v. Lepe*, 2025 U.S. Dist. LEXIS 197721, *8 (C.D. Cal. Aug. 2 | 18, 2025) (noting moot challenges to loss of commissary and email privileges do 3 | not provide basis for habeas jurisdiction under § 2241), accepted by. 2025 U.S. 5 IT THEREFORE IS ORDERED that Respondent's motion to dismiss the 6 Petition for Writ of Habeas Corpus is GRANTED.

7 IT IS FURTHER ORDERED that judgment be entered denying the Petition g for Writ of Habeas Corpus and dismissing this action without prejudice. 5 Maire be dayh_ DATED: December 16, 2025 _ 10 HONORABLE CHRISTINA A. SNYDER 11 United States District Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28