

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-40115-RGS

MICHAEL BLACK

v.

CAROLYN SABOL,
Warden, Federal Medical Center, Devens

MEMORANDUM AND ORDER ON
RESPONDENT'S MOTION TO DISMISS

October 22, 2009

STEARNS, D.J.

On June 15, 2009, Michael Black, an inmate at the Federal Medical Center, Devens (FMC-Devens) filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Black seeks an Order directing the Bureau of Prisons (BOP) to transfer him to home confinement and/or a Residential Reentry Center (RRC). On July 22, 2009, Respondent filed a motion to dismiss the petition in its entirety. Black has not opposed the motion.

BACKGROUND

In 1999, Black was convicted in the Northern District of Illinois of narcotics offenses.¹ He is currently serving a sentence of 168 months at FMC-Devens. Black is scheduled to be released in June of 2011.² Black allegedly suffers from numerous medical problems, including a spinal cord injury that has rendered him a paraplegic, congestive

¹Black is no stranger to this court. On January 4, 2008, the court dismissed Black's third successive petition for writ of habeas corpus. See Black v. Sabol, Civ. Action No. 07-40309-RGS, Docket #3, at 10.

²While Black believes that his release date is June 19, 2011, Respondent is of the view that Black will not become eligible for release until June 27, 2011.

heart failure, asthma, diabetes, hypertension, a bone infection, and chronic (and untreatable) pain.³

Black argues that while FMC-Devens may appear to have all of the “bright lights, bells and whistles” of a top-notch medical center, he is in fact subjected to unprofessional, incompetent medical care that falls below prevailing community standards. Black contends that he is entitled to relief pursuant to a combination of the Sentencing Guidelines and two statutes related to inmate assignments: 18 U.S.C. §§ 3621(b) and 3624(c), as amended by the Second Chance Act of 2007, Pub. Law. 110-199, 122 Stat. 657 (April 9, 2008).

DISCUSSION

Section 3621 provides that “[t]he Bureau of Prisons shall designate the place of the prisoner’s imprisonment” after considering five factors, including the appropriateness of the contemplated facility, the characteristics and history of the prisoner, and the recommendations of the sentencing court. 18 U.S.C. § 3621(b). Section 3624 provides that to the extent practicable, BOP shall ensure that a prisoner spends up to twelve months of the final portion of his term under conditions that will allow him to adjust and prepare for reentry into the community, including being placed in an RRC. See 18 U.S.C. § 3624(c)(1). The statute additionally grants BOP the authority to transfer an inmate to home confinement for the last six months of his sentence. See id., § 3624(c)(2).

³¹Black additionally states that he has suffered numerous injuries during his incarceration. His federal civil rights lawsuit alleging Eighth Amendment violations was dismissed by Chief Judge Wolf on September 26, 2008. See Civ. Action No. 07-10794-MLW.

Section 3621 vests the BOP with the sole authority to make determinations regarding the place of imprisonment and inmate transfers, as it provides that “[a]ny order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.” 18 U.S.C. § 3621(b). Section 3624 affirms this authority, stating that “[n]othing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.” 18 U.S.C. § 3624(c)(4).

As the First Circuit has conclusively ruled, “the statute leaves it to the BOP’s discretion whether to undertake a transfer at all.” Muniz v. Sabol, 517 F.3d 29, 36 (1st Cir. 2008). Indeed, “as long as the BOP ‘considers’ the five factors, it has virtually unlimited discretion to place inmates wherever it deems appropriate.” Id. at 40. See also Goldings v. Winn, 383 F.3d 17, 28 (1st Cir 2004) (“Under § 3621(b), the BOP has discretionary authority to designate any available penal or correctional facility that meets minimum standards of health and habitability as the place of a prisoner’s imprisonment, and to transfer a prisoner at any time to such a facility.”).⁴

Black’s present petition is problematic for a variety of reasons. First, the Administrative Procedure Act precludes judicial review of individual determinations under

⁴The Sentencing Guideline upon which Black relies does not advance his case. It provides that a court may reduce a term of imprisonment and impose a term of supervised release if “extraordinary and compelling reasons” warrant such a reduction. U.S.S.G. § 1B1.13(1)(A). However, “the Guidelines are [applicable only to] the courts. They do not address the BOP’s use of its discretion as the custodian of federal prisoners to designate the appropriate place of imprisonment.” Goldings, 383 F.3d at 28.

sections 3621 and 3624. See 18 U.S.C. § 3625; Iacoboni v. United States, 251 F. Supp. 2d 1015, 1036 (D. Mass. 2003) (Ponsor, J.). Second, the record reveals that BOP in any event has not made an individual determination with regard to Black, as he has not requested a transfer under BOP's administrative procedures.⁵ This is understandable as sections 3621(b) and 3624(c) do not contemplate relief at a time more than one year prior to the end of an inmate's prison term. Black at present has almost two years remaining on his sentence.

CONCLUSION

For the foregoing reasons, Respondent's motion to dismiss will be ALLOWED. The Clerk will enter judgment for Respondent and close the case.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE

⁵According to an attachment to Black's petition, he did previously request that BOP release him on compassionate grounds. Black was informed that his request was denied in May of 2007 because "(1) at this point, your medical conditions are considered chronic but stable; (2) you are receiving appropriate medical care at FMC-Devens; (3) although you have various physical impairments, you are still independent with areas of daily living, and could be capable of committing further crimes if released at this time; [and] (4) your medical conditions were known at the time of sentencing." The court notes that release from imprisonment is not the equivalent of the relief sought here - transfer to home confinement or referral to an RRC.