UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Daniel Wayne Joiner, Petitioner, v. B. Eischen and FPC Duluth, Respondents.	Case No. 25-CV-1296 (NEB/DJF) **REPORT AND RECOMMENDATION**

Under the First Step Act of 2018 ("FSA"), an eligible federal prisoner who "successfully completes evidence-based recidivism reduction programming or productive activities" can earn time credits that, when applied, may shorten how much time the prisoner spends in custody. 18 U.S.C. § 3632(d)(4). Petitioner Daniel Wayne Joiner alleges the Federal Bureau of Prisons has failed to award him the full amount of time credits he is due under the FSA. In his petition for a writ of habeas corpus ("Petition") (ECF No. 1), Mr. Joiner asks the Court to direct the BOP to award him credit for 220 "disallowed days" of FSA credits for time Mr. Joiner spent when he was "transferred between different prison institutions." (*Id.* at 1.)

The Court previously conducted a preliminary review of Mr. Joiner's Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.[1] (ECF No. 5.) Based on that review, the Court noted that Mr. Joiner admitted in his Petition that he had not fully exhausted administrative remedies for his claim. (*Id.* at 2.) The federal habeas corpus statute does not include an exhaustion requirement, *see generally* 28 U.S.C. § 2241, but courts

[1] Although Mr. Joiner does not bring his Petition under 28 U.S.C. § 2254, the Rules Governing Section 2254 cases still apply. *See* Rule 1(b).

have long required prisoners to exhaust BOP administrative remedies before seeking habeas relief, *see Mathena v. United States*, 577 F.3d 943, 946 (8th Cir. 2009); *United States v. Chappel*, 208 F.3d 1069, 1069 (8th Cir. 2000) (per curiam). Mr. Joiner attested in his Petition that he started the administrative review process, but after the BOP denied his claim at the first two stages of administrative review,[2] he decided further pursuit of the administrative review process would be futile. (ECF No. 1 at 2-3.) Mr. Joiner also argued that, because his claim presented a "straightforward [l]egal question" regarding his eligibility for FSA time credits, any administrative exhaustion requirement was inapt. (*Id.* at 2.)

The Court expressed its doubts about Mr. Joiner's arguments in an Order to Show Cause directing him to explain why this matter should not be dismissed for failure to exhaust administrative remedies. (ECF No. 5.) The Court explained that, as a threshold matter, "the mere fact that a prisoner believes the BOP is unlikely to agree with him does not render the pursuit of administrative remedies futile." (*Id.* at 2, citing *Abieanga v. Eischen*, No. 24-CV-3131 (JWB/JFD), 2024 WL 4557612, at *2 (D. Minn. Sept. 18, 2024).) The fact that Mr. Joiner's administrative appeals were not successful did not give him license to simply decide not to pursue his administrative remedies further (ECF No. 5 at 2).

Nor was the Court convinced that Mr. Joiner's Petition presented a "straightforward legal question." (*Id.*) Mr. Joiner's basis for that argument was that, under BOP regulations, prisoners who are in transit between facilities are generally ineligible for FSA time credits. *See* 28 C.F.R. § 523.41(c)(4). Mr. Joiner argued that such an interpretation was a perversion of the plain language of the FSA, which includes no such restriction on eligibility to earn FSA time credits for prisoners

[2] The BOP "has a four-tiered administrative procedure for inmate grievances." *Gonzalez v. Bendt*, 971 F.3d 742, 744 (8th Cir. 2020) (citing 28 C.F.R. § 542.10 et seq.). Mr. Joiner concedes in his Petition that he did not pursue the final two stages of the administrative review process. (ECF No. 1 at 2-3.)

in transit. (ECF No. 1 at 1.) But as the Court noted in its Order to Show Cause, Mr. Joiner's Petition was likely to turn not only on the legal question of whether Section 523.41(c)(4) conflicted with the FSA, but on the factual question of whether, and to what extent, Mr. Joiner actually participated in "evidence-based recidivism reduction programming or productive activities" during the period at issue. (ECF No. 5 at 2, citing18 U.S.C. § 3632(d).) If Mr. Joiner did not participate in evidence-based recidivism reduction programming or productive activities—and Mr. Joiner did not affirmatively state anywhere in his Petition that he *had* participated—then, under the plain language of the statute, he would not be eligible for FSA time credits, regardless of whether regulatory barriers also precluded him from earning FSA time credits. Exhaustion of administrative review would clarify whether Mr. Joiner participated in evidence-based recidivism reduction programming or productive activities and would further clarify whether Mr. Joiner was even alleging that he participated in them.

The Court ordered Mr. Joiner to show cause why this matter should not be dismissed for failure to exhaust administrative remedies for these reasons. (ECF No. 5.) Mr. Joiner filed a response to the Order to Show Cause on May 12, 2025. (ECF No. 6.) But in lieu of addressing the exhaustion issues the Court raised, Mr. Joiner's response consists largely of expansions on his argument that the allegedly categorical exclusions found in Section 523.41(c)(4) are contrary to the plain language of the FSA.[3] (ECF No. 6.) Less than two pages of Mr. Joiner's nineteen-page response are directed towards the issue of exhaustion (*see id.* at 7-8), and most of that is nothing more than a recapitulation of his argument that the only issue before the Court is the legal question

[3] The restrictions in Section 523.41(c)(4) are not, in fact, categorical, as other courts have recognized. *See, e.g.*, *Dunlap v. Warden FMC Devens*, No. 24-CV-11462-RGS, 2024 WL 5285006, at *9 (D. Mass. Dec. 13, 2024). Section 523.41(c)(4) states only that prisoners in various circumstances, such as those in transit between facilities, "will *generally* not be considered to be 'successfully participating'" in evidence-based recidivism reduction programming or productive activities (emphasis added).

of whether BOP policy conflicts with the FSA.[4] But as previously noted, this contention is mistaken. Mr. Joiner is eligible for FSA time credits if, and only if, he actually participated in "evidence-based recidivism reduction programming or productive activities." 18 U.S.C. § 3632(d)(4); *accord Shemtov v. Birkholz*, No. 2:24-CV-10630-SRM-JC, 2025 WL 1490543, at *5-6 (C.D. Cal. Mar. 13, 2025) (collecting cases); *Dunlap v. Warden FMC Devens*, No. 24-CV-11462-RGS, 2024 WL 5285006, at *9 (D. Mass. Dec. 13, 2024). Whether Mr. Joiner participated in evidence-based recidivism reduction programming or productive activities is a factual question better resolved by the BOP and not the Court in the first instance—both so the BOP has an opportunity to correct any mistakes it may have made (and thereby obviate the need for judicial intervention at all), and so the evidentiary record and the parties' arguments are clarified prior to judicial involvement. *See Houston v. Warden of FCI Allenwood Medium*, No. 1:24-CV-1474, 2025 WL 336725, at *3-4 (M.D. Penn. Jan. 29, 2025) (denying habeas petition seeking FSA time credits for lack of administrative exhaustion).

Mr. Joiner also argues he should be excused from exhausting administrative remedies because there is not enough time for him to pursue the administrative review process to its completion prior to his release from prison. (ECF No. 6. at 7-8, arguing that "the inmate would lose time and end up with a moot motion if this Court does not exercise its right of Judicial determination, causing irreparable harm".) This argument is unpersuasive for two reasons. First, Mr. Joiner is not currently scheduled for release from prison until November 2027. His Petition concerns 220 "disallowed days" of FSA credits. Even if Mr. Joiner is correct that he is entitled to FSA time credits for the entire period at issue, the result would be that Mr. Joiner would be eligible

[4] Page two of Mr. Joiner's response appears to have been omitted from the documents submitted to the Court. The above citation refers to the pages marked as pages eight and nine by Mr. Joiner, but which are in fact the seventh and eighth pages in the document filed.

for a reduction in custodial term or transfer to prerelease custody *at most* about four months sooner than he is currently scheduled. *See* 18 U.S.C. § 3632(d)(4) (stating that prisoners may earn FSA time credits at a maximum rate of 15 days of credit for every 30 days of programming). Mr. Joiner thus has plenty of time to pursue administrative remedies before his claim for relief will become moot. Second, even if Mr. Joiner had an earlier projected release date, there is no reason to believe he could not have pursued the administrative review process sooner; indeed, Mr. Joiner attests that he started the process before he sought habeas relief, but later terminated the process of his own accord. (ECF No. 1 at 2-3.) A prisoner cannot evade the administrative review requirement by running down the clock on his claims for relief and then seeking judicial relief at the last possible moment.

Mr. Joiner has not exhausted his administrative remedies and he has not provided a convincing explanation as to why the Court should excuse the administrative review requirement. Accordingly, the Court now recommends Mr. Joiner's Petition be denied without prejudice for failure to exhaust administrative remedies.[5] And because the Court recommends his Petition be denied, the Court recommends his pending application to proceed *in forma pauperis* be denied as well. *See Kruger v. Erickson*, 77 F.3d 1071, 1074 n.3 (8th Cir. 1996) (per curiam).

[5] Mr. Joiner's Petition also briefly refers to the Second Chance Act of 2007 ("SCA") and seeks relief under that statute (ECF No. 1 at 4-5), but the grounds for any claim under the SCA are unclear. There is nothing to suggest Mr. Joiner has exhausted this claim for relief, and in any event, any claim of entitlement to habeas relief under the SCA that Mr. Joiner might be raising would be futile. *See Moreno v. Eischen*, No. 25-CV-0209 (JMB/JFD), 2025 WL 791219, at *1 (D. Minn. Feb. 12, 2025) (collecting cases).

RECOMMENDATION

Based on the foregoing, and on all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT**:

1. Petitioner Daniel Wayne Joiner's Petition for a writ of habeas corpus (ECF No. [1]) be **DENIED WITHOUT PREJUDICE** for failure to exhaust administrative remedies.

2. This matter be **DISMISSED**.

3. Mr. Joiner's application to proceed *in forma pauperis* (ECF No. [4]) be **DENIED**.

Dated: June 11, 2025

s/ Dulce J. Foster
DULCE J. FOSTER
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).