

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NOV 2 2004

PATRICK FISHER
Clerk

JEFFREY E. STEWART,

Petitioner - Appellant,

v.

REGINALD HINES, Warden,

Respondent - Appellee.

No. 03-6357
(D.C. No. CIV-02-1752-F)
(W.D. Okla)

ORDER

Before **EBEL, MURPHY** and **McCONNELL**, Circuit Judges.

Petitioner Jeffrey E. Stewart brings a habeas action pursuant to 28 U.S.C. § 2241, challenging prison disciplinary proceedings for his alleged refusal to cell with an inmate of another race. He received sanctions of 30 days in disciplinary segregation, forfeiture of 180 days of earned credits, and demotion from prison classification level 4 to level 1, which diminished his ability to earn additional credits. Before this court, Petitioner asserts due process and equal protection claims, challenging the sufficiency of the evidence against him, the fairness of the prison's investigation, and the equality of his treatment as compared to other inmates.

The district court, adopting the recommendations of the magistrate judge, denied habeas relief on the merits of these issues in this case. The district court also denied a certificate of appealability (“COA”).

A state habeas petitioner seeking a writ pursuant to 28 U.S.C. § 2241 must obtain a COA before proceeding on appeal. Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000). Petitioner is entitled to a COA only upon making a “substantial showing of the denial of a constitutional right.” Id. For substantially the same reasons stated in the district court’s order and the magistrate judge’s recommendation, we find that Petitioner has not made the requisite showing. Accordingly, we DENY COA on all claims and DISMISS this appeal.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge