



Virtue v. Birkholz

2019 | Cited 0 times | D. Minnesota | October 22, 2019

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Joel John Virtue, Case No. 19-cv-2403 (WMW/DTS) Petitioner, REPORT & RECOMMENDATION v. Warden B. Birkholz, Respondent.

Petitioner Joel John Virtue seeks a writ of habeas corpus from this Court. When he filed his Petition, Virtue was incarcerated at the Federal Prison Camp in Duluth, Minnesota, despite being eligible for home confinement under the First Step Act. Pet. 1, Ex. A, Dkt. No. 1. He requests and damages for his time in prison beyond the date he became eligible for home

placement. Id. at 7. However, Virtue has subsequently been placed in home Because Virtue has obtained all the relief this Court could provide in a writ of habeas

corpus, his Petition is now moot.

Ali v. Cangemi, 419 F.3d 722, 723 (8th Cir. 2005) (quoting Haden v. Pelofsky, 212 F.3d 466, 469 (8th Cir. 2000)). A case Spencer v.

Kemna, 523 U.S. 1, 7 (1998). Without a live controversy to decide, a court must dismiss the action for lack of jurisdiction. Cangemi, 419 F.3d at 724.

2 By being placed in home confinement, Virtue has received all the redress that a favorable decision on his Petition would bring. He also requests money damages in Petition, but such relief is not available in habeas and so cannot be granted. Muhammad v. Close, 540 U.S. 749, 750-51 (2004). Further for purposes of 28 U.S.C. § 2241, Virtue challenges only the alleged failure to move him to home confinement at the earliest possible date he was eligible this Court could redres See, e.g., Kemna, 523 U.S. at 7-8.

In short, any claim for relief, if any, Virtue has following his placement in home confinement is not cognizable in a petition for habeas corpus and so his Petition is denied.

RECOMMENDATION The Court HEREBY RECOMMENDS that for a Writ of Habeas Corpus



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under 28 U.S.C. § 2241 (Dkt. No. 1) BE DENIED and this

matter DISMISSED.

Dated: October 22, 2019 s/David T. Schultz _____ DAVID T. SCHULTZ United States Magistrate Judge

