

OCT 28 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| |
|---|
| <p>JIMMY QUAN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>U.S. BUREAU OF PRISONS and D. SMITH, Warden,</p> <p>Respondents - Appellees.</p> |
|---|

No. 08-17676

D.C. No. 1:08-cv-00511-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Federal prisoner Jimmy Quan appeals pro se from the district court's judgment denying, in part, his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The Bureau of Prisons (BOP) contends that the district court lacked jurisdiction to consider Quan's petition under 28 U.S.C. § 2241. This contention fails because Quan currently challenges the manner in which his sentence was executed. *See Tucker v. Carlson*, 925 F.2d 330, 331 (9th Cir. 1991) (stating that challenges to the manner in which a sentence was executed are maintainable only in habeas petitions filed under § 2241); *see also Rodriguez v. Smith*, 541 F.3d 1180 (9th Cir. 2008) (granting a petition filed under § 2241 that challenged a BOP policy regarding the transfer of inmates to Residential Re-entry Centers) .

Quan contends that the BOP continues to categorically refuse to consider placing prisoners in Residential Re-entry Centers (RRC) prior to their final six months of incarceration, in violation of 18 U.S.C. §§ 3621(b), 3624(c), and *Rodriguez*. This contention fails because Quan has not presented any evidence to support this claim.

Quan also contends that, under § 3621(b) and *Rodriguez*, the BOP is required to immediately assess him for placement in an RCC. This contention fails because § 3621(b) provides the BOP with *discretionary* authority to consider RCC placement for inmates prior to the last ten percent of the prison term. *See Rodriguez*, 541 F.3d at 1182-85.

Finally, Quan contends that the BOP is required to consider placing him in an RCC for the last ten percent of his sentence. While a true statement of law, *see id.* at 1184, Quan does not present any basis for relief because Quan concedes that he is not yet serving the last ten percent of the prison term. *See 18 Unnamed “John Smith” Prisoners v. Meese*, 871 F.2d 881, 882-83 (9th Cir. 1989) (controversy required for claim to be ripe).

AFFIRMED.