

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DAVID R. SIMCOKE,**

**Petitioner,**

**v.**

**Case No. 1:07cv77  
(Judge Keeley)**

**WAYNE PHILLIPS,**

**Respondent.**

**ORDER CORRECTING REPORT AND RECOMMENDATION  
ISSUED SEPTEMBER 6, 2007**

On September 6, 2009, the undersigned issued a Report and Recommendation (“R&R”) on the petitioner’s Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241. As noted in the R&R, the respondent had filed a Motion to Dismiss on July 25, 2007. In the R&R, I found that the petition should be granted but neglected to recommend that the Motion to Dismiss be denied. Therefore the recommendation should read as follows:

Based on the foregoing, the undersigned recommends that the petitioner’s §2241 petition be **GRANTED** and the BOP be directed to reconsider petitioner for RRC placement utilizing the five factors set forth in 18 U.S.C. § 3621(b). It is further recommended that the respondent’s Motion to Dismiss (dckt. 8) be **DENIED**.

IT IS SO ORDERED.

The Clerk is directed to send a copy of this order to the *pro se* petitioner and counsel of record, as applicable.

DATED: September 11, 2007

/s/ James E. Seibert  
JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE