

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARK JAMES TAYLOR,	)	1:09-cv-01876-OWW-SKO-HC
	)	
Petitioner,	)	FINDINGS AND RECOMMENDATION TO
	)	DISMISS STATE LAW CLAIMS AND TO
	)	REQUIRE A RESPONSE WITH RESPECT
v.	)	TO PETITIONER'S DUE PROCESS CLAIM
	)	(DOC. 1)
JAMES A. YATES,	)	
	)	OBJECTIONS DEADLINE:
Respondent.	)	THIRTY (30) DAYS
	)	
	)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304. Pending before the Court is the petition, which was filed on October 26, 2009.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition "[i]f it plainly

1 appears from the petition and any attached exhibits that the  
2 petitioner is not entitled to relief in the district court....”  
3 Habeas Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
4 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
5 1990). Habeas Rule 2(c) requires that a petition 1) specify all  
6 grounds of relief available to the Petitioner; 2) state the facts  
7 supporting each ground; and 3) state the relief requested.  
8 Notice pleading is not sufficient; rather, the petition must  
9 state facts that point to a real possibility of constitutional  
10 error. Rule 4, Advisory Committee Notes, 1976 adoption;  
11 O’Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge v.  
12 Allison, 431 U.S. 63, 75 n. 7 (1977)). Allegations in a petition  
13 that are vague, conclusory, or palpably incredible are subject to  
14 summary dismissal. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th  
15 Cir. 1990).

16 Further, the Court may dismiss a petition for writ of habeas  
17 corpus either on its own motion under Habeas Rule 4, pursuant to  
18 the respondent's motion to dismiss, or after an answer to the  
19 petition has been filed. Advisory Committee Notes to Habeas Rule  
20 8, 1976 adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43  
21 (9th Cir. 2001).

## 22 II. The Petition

23 Petitioner, an inmate of Pleasant Valley State Prison,  
24 challenges a disciplinary finding made in March 2008 that  
25 Petitioner failed to comply with count procedures in violation of  
26 Cal. Code Regs. tit. 15, § 3017, which provides, “Inmates must be  
27 present at designated times and places for counts, and must  
28 present themselves for count in the manner set forth in

1 institution procedures." (Pet. 7, 37, 19.) Petitioner forfeited  
2 thirty (30) days of credit for the offense. Petitioner alleges  
3 1) he is innocent of the violation because of insufficient  
4 evidence of the prohibited conduct and of wilfulness; 2) the  
5 offense of failure to comply with count procedures was not an  
6 offense, was not a lesser included offense of the originally  
7 charged violation of delaying a peace officer while performing  
8 his duties, and was not a serious rules violation; 3) Cal. Code.  
9 Regs. tit. 15, § 3017 grants excessive discretion and results in  
10 false charges of violations and wrongful convictions; and 4)  
11 Petitioner thereby suffered a violation of due process guaranteed  
12 under both the state constitution and the Fourteenth Amendment of  
13 the United States Constitution. (Pet. 7-16.)

14 III. Claims Involving Only State Law

15 A. Legal Standards

16 Federal habeas relief is available to state prisoners only  
17 to correct violations of the United States Constitution, federal  
18 laws, or treaties of the United States. 28 U.S.C. § 2254(a).  
19 Federal habeas relief is not available to retry a state issue  
20 that does not rise to the level of a federal constitutional  
21 violation. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).  
22 Alleged errors in the application of state law are not cognizable  
23 in federal habeas corpus. Souch v. Schiavo, 289 F.3d 616 (9th  
24 Cir. 2002) (a claim challenging state court's discretionary  
25 decision concerning application of state sentencing law presented  
26 only state law issues and was not cognizable in a proceeding  
27 pursuant to 28 U.S.C. § 2254); Langford v. Day, 110 F.3d 1380,  
28 1389 (9th Cir. 1996). The Court accepts a state court's

1 interpretation of state law. Langford v. Day, 110 F.3d 1380,  
2 1389 (9th Cir. 1996). In a habeas corpus proceeding, this Court  
3 is bound by the California Supreme Court's interpretation of  
4 California law unless it is determined that the interpretation is  
5 untenable or a veiled attempt to avoid review of federal  
6 questions. Murtishaw v. Woodford, 255 F.3d 926, 964 (9<sup>th</sup> Cir.  
7 2001).

8 B. Analysis of Petitioner's Claims

9 Issues two through three raised by Petitioner involve the  
10 interpretation and application of the state statutory and  
11 regulatory law that created and calibrated the disciplinary rules  
12 violations. To the extent that Petitioner in claim four alleges  
13 a violation of due process based upon the state constitution, the  
14 issue is purely one of state law. These claims are not  
15 cognizable in a proceeding pursuant to § 2254. Therefore, they  
16 must be dismissed.

17 However, claims one and four, when liberally read, allege a  
18 cognizable claim of a violation of due process of law because of  
19 the absence of some evidence to support a finding of a violation  
20 of the pertinent disciplinary rules. Thus, these claims are  
21 cognizable in a § 2254 proceeding.

22 IV. Recommendation

23 Accordingly, it is RECOMMENDED that:

24 1) Petitioner's claims concerning the interpretation of the  
25 offense of failure to comply with court procedures, its status as  
26 a serious rules violation or as a lesser included offense of the  
27 originally charged violation, the extent of discretion entrusted  
28 in prison officials under Cal. Code. Regs. tit. 15, § 3017, and

1 any violation of due process of law premised solely on the state  
2 constitution be DIMISSED because they are not cognizable in a  
3 proceeding pursuant to 28 U.S.C. § 2254; and

4 2) Insofar as Petitioner claims a violation of due process  
5 of law because of the absence of some evidence to support a  
6 finding of a violation of the pertinent disciplinary rules, the  
7 Respondent should be ordered to file a response to the petition.

8 These findings and recommendations are submitted to the  
9 United States District Court Judge assigned to the case, pursuant  
10 to the provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of  
11 the Local Rules of Practice for the United States District Court,  
12 Eastern District of California. Within thirty (30) days after  
13 being served with a copy, any party may file written objections  
14 with the Court and serve a copy on all parties. Such a document  
15 should be captioned "Objections to Magistrate Judge's Findings  
16 and Recommendations." Replies to the objections shall be served  
17 and filed within fourteen (14) days (plus three (3) days if  
18 served by mail) after service of the objections. The Court will  
19 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §  
20 636 (b) (1) (C). The parties are advised that failure to file  
21 objections within the specified time may waive the right to  
22 appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
23 1153 (9th Cir. 1991).

24  
25 IT IS SO ORDERED.

26 **Dated: July 13, 2010**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**