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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OLIVER A. CAMPBELL,)	1:10-cv-01681-BAM-HC
)	
Petitioner,)	ORDER DENYING THE PETITION FOR
)	WRIT OF HABEAS CORPUS (DOC. 1)
)	
v.)	ORDER DIRECTING THE CLERK TO
)	ENTER JUDGMENT FOR RESPONDENT
H. A. RIOS,)	
)	
Respondent.)	
)	
)	

Petitioner is a federal prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting their consent in writings signed by the parties or their representatives and filed by Petitioner on September 27, 2010, and on behalf of Respondent on May 23, 2011. Pending before the Court is the petition, which was filed on September 16, 2010.

1 Respondent filed an answer to the petition on March 28, 2011. No
2 traverse was filed.

3 I. Jurisdiction

4 A. Subject Matter Jurisdiction

5 Relief by way of a writ of habeas corpus extends to a
6 prisoner in custody under the authority of the United States who
7 shows that the custody violates the Constitution, laws, or
8 treaties of the United States. 28 U.S.C. § 2241(c)(3). Although
9 a federal prisoner who challenges the validity or
10 constitutionality of his conviction must file a petition for writ
11 of habeas corpus pursuant to 28 U.S.C. § 2255, a federal prisoner
12 challenging the manner, location, or conditions of the execution
13 of a sentence must bring a petition for writ of habeas corpus
14 under 28 U.S.C. § 2241. Hernandez v. Campbell, 204 F.3d 861,
15 864-65 (9th Cir. 2000).

16 Here, Petitioner alleges that he was denied procedural
17 rights and due process of law in connection with a prison
18 disciplinary hearing, which resulted in a loss of good conduct
19 time credits. A due process claim concerning parole, good time,
20 or other rules administered by a prison administrator that
21 challenges the duration of a sentence is a cognizable claim of
22 being in custody in violation of the Constitution pursuant to 28
23 U.S.C. § 2241(c)(3). See, e.g., Superintendent v. Hill, 472 U.S.
24 445, 454 (1985) (determining a procedural due process claim
25 concerning disciplinary procedures and findings). If a
26 constitutional violation has resulted in the loss of time
27 credits, it affects the duration of a sentence, and the violation
28 may be remedied by way of a petition for writ of habeas corpus.

1 Young v. Kenny, 907 F.2d 874, 876-78 (9th Cir. 1990).

2 Accordingly, the Court concludes that it has subject matter
3 jurisdiction over the petition.

4 B. Jurisdiction over the Person

5 Title 28 U.S.C. § 2241(a) provides that writs of habeas
6 corpus may be granted by the district courts "within their
7 respective jurisdictions." A writ of habeas corpus operates not
8 upon the prisoner, but upon the prisoner's custodian. Braden v.
9 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 494-495
10 (1973). A petitioner filing a petition for writ of habeas corpus
11 under § 2241 must file the petition in the judicial district of
12 the petitioner's custodian. Brown v. United States, 610 F.2d
13 672, 677 (9th Cir. 1990). The warden of the penitentiary where a
14 prisoner is confined constitutes the custodian who must be named
15 in the petition, and the petition must be filed in the district
16 of confinement. Rumsfeld v. Padilla, 542 U.S. 426, 446-47
17 (2004). A failure to name and serve the custodian deprives the
18 Court of personal jurisdiction. Johnson v. Reilly, 349 F.3d
19 1149, 1153 (9th Cir. 2003).

20 Here, at all pertinent times, Petitioner has been
21 incarcerated at the United States Prison at Atwater, California
22 (USPA), which is located within the territory of the Eastern
23 District of California. Petitioner named H. A. Rios, the Warden
24 of USPA, as Respondent.

25 Accordingly, the Court concludes that it has personal
26 jurisdiction over the Respondent.

27 II. Factual and Procedural Summary

28 The facts and procedural history are derived from copies of

1 reports that were filed by Respondent in support of the answer
2 and that are established by the declaration of Robert J. Ballash,
3 Discipline Hearing Administrator of the Federal Bureau of Prisons
4 (BOP), to be true and accurate copies of documents created and
5 maintained by the BOP in the ordinary course of business. (Doc.
6 8-1, 2-7.)

7 The incident report of Correctional Officer B. Pavey dated
8 October 3, 2009, reflects that on that date, Officer Pavey
9 discovered a sharpened metal object approximately six and one-
10 half inches long while he was conducting a random search of a
11 cell that Petitioner shared with another inmate. The object was
12 found magnetized underneath the door of the cell. Petitioner
13 told both the investigating officer and the unit disciplinary
14 committee that the object was his. (Ans., doc. 8-1 at 16-17.)
15 Petitioner assured the committee that his cell mate had nothing
16 to do with it, and Petitioner was going to take responsibility
17 for the object. (Id. at 16.) Evidence before the disciplinary
18 fact finder also included a photograph of the object. (Ans.,
19 doc. 8-2 at 3, 6.)

20 Petitioner received a copy of the incident report on October
21 4, 2009. (Ans., doc. 8-1, 16.) The unit disciplinary committee
22 referred the charge to the disciplinary hearing officer (DHO) for
23 further hearing and consideration of sanctions on October 5,
24 2009. (Id.) On October 5, 2009, Petitioner signed a notice of
25 referral of the charge of possession of a weapon to the DHO; he
26 stated that he did not wish to have a staff representative or
27 witnesses. (Id. at 19.) On the same date he signed a notice of
28 his procedural rights concerning the disciplinary proceedings.

1 (Id. at 20.)

2 The DHO hearing was held on October 8, 2009. Petitioner
3 admitted the charges. (Doc. 8-2 at 2.) The DHO considered the
4 incident report and investigation, Petitioner's admission, and
5 the photograph of the weapon. (Doc. 8-2 at 3.) The DHO found
6 that Petitioner had possessed a weapon in violation of prohibited
7 acts code 104 based on the written report of the incident made by
8 staff; Petitioner's admissions that the weapon was his to the
9 investigating lieutenant, the unit disciplinary committee, and
10 the DHO at the hearing; and the photograph taken at the time of
11 the incident that reflected one metal homemade weapon that was
12 six and three-quarters inches in length and sharpened to a point
13 on one end. (Id.)

14 The DHO imposed thirty (30) days of disciplinary segregation
15 with ten (10) days suspended, disallowed forty (40) days of good
16 conduct time, and prohibited commissary privileges for 180 days.
17 (Id. at 4.) The DHO report was electronically sent to the
18 inmate's unit manager and was delivered to Petitioner within
19 three working days of October 30, 2009. (Id. at 5.)

20 Respondent admits that Petitioner exhausted administrative
21 remedies. (Ans., doc. 8 at 5-6.) It appears that Petitioner
22 received a copy of the unit disciplinary committee's report
23 during the administrative appeal. (Doc. 8-2 at 13.)

24 III. The Hearing Officer

25 Petitioner alleges that Lieutenant D. Tyson, the Alternate
26 Disciplinary Hearing Officer who presided over the DHO hearing,
27 was not certified to conduct a DHO hearing and was not an
28 impartial party.

1 A. Certification

2 Petitioner alleges no facts concerning the certification or
3 authority of Lt. Tyson to conduct the hearing. Respondent
4 submits the declaration of Discipline Hearing Administrator
5 Ballash, who supervises the discipline hearing officers within
6 the western region of the BOP. Ballash's declaration notes that
7 the appeal response within the administrative remedial process
8 confirmed that Lt. Tyson was trained and certified as a DHO, even
9 though it was not the staff person's primary job assignment.
10 (Doc. 8-1, 6; doc. 8-2, 13.)

11 Accordingly, the Court concludes that there is no merit to
12 Petitioner's generalized assertion that the DHO was not
13 authorized or certified to preside over the DHO hearing.

14 B. Impartiality

15 A fair trial in a fair tribunal is a basic requirement of
16 due process. In re Murchison, 349 U.S. 133, 136 (1955).
17 Fairness requires an absence of actual bias and of the
18 probability of unfairness. Id. Bias may be actual, or it may
19 consist of the appearance of partiality in the absence of actual
20 bias. Stivers v. Pierce, 71 F.3d 732, 741 (9th Cir. 1995). A
21 showing that the adjudicator has prejudged, or reasonably appears
22 to have prejudged, an issue is sufficient. Kenneally v. Lungren,
23 967 F.2d 329, 333 (9th Cir. 1992).

24 However, there is a presumption of honesty and integrity on
25 the part of decision makers which may be overcome by evidence of
26 a risk of actual bias or prejudgment based on special facts and
27 circumstances. Withrow v. Larkin, 421 U.S. 35, 46-47, 58 (1975).

28 The mere fact that a decision maker denies relief in a given

1 case or has denied relief in the vast majority of cases does not
2 demonstrate bias. Stivers v. Pierce, 71 F.3d at 742. This is
3 because unfavorable judicial rulings alone are generally
4 insufficient to demonstrate bias unless they reflect such extreme
5 favoritism or antagonism that the exercise of fair judgment is
6 precluded. Liteky v. United States, 510 U.S. 540, 555 (1994).
7 The Supreme Court has ruled that a committee of correctional
8 officers and staff, acting with the purpose of taking necessary
9 disciplinary measures to control inmate behavior within
10 acceptable limits, was sufficiently impartial to conduct
11 disciplinary hearings and impose penalties including revocation
12 of good time credits. Wolff v. McDonnell, 418 U.S. 539, 570-71
13 (1974).

14 Here, Petitioner does not state any facts in support of his
15 general assertion that the DHO was not impartial. In contrast,
16 Respondent has submitted the response of the BOP in the
17 administrative appeal process, which was made by Harrell Watts,
18 Administrator of National Inmate Appeals, and authenticated by
19 Ballash. It reflects that the DHO was not the reporting officer,
20 investigating officer, a member of the unit disciplinary
21 committee, a witness to the incident, or one who played any
22 significant part in having the charges referred to the DHO.
23 Accordingly, the DHO met the criteria established by BOP policy.
24 (Doc. 8-2 at 13.) Under these circumstances, there is no basis
25 to rebut or otherwise undermine the presumption that DHO Tyson
26 was not impartial.

27 Therefore, the Court concludes that Petitioner has not met
28 his burden of showing that the DHO was not impartial.

1 Accordingly, Petitioner's claims concerning the DHO will be
2 denied.

3 IV. Denial of Due Process Based on Allegedly Defective
4 Notice

5 Petitioner argues that he was not provided a copy of the
6 unit disciplinary committee's hearing decision before the DHO
7 hearing was held, and therefore his due process rights were
8 violated.

9 The process due in a prison disciplinary proceeding
10 includes: 1) written notice of the charges; 2) at least a brief
11 period of time after the notice (no less than twenty-four hours)
12 to prepare for the hearing; 3) a written statement by the fact
13 finders as to the evidence relied on and reasons for the
14 disciplinary action; 4) an opportunity for the inmate to call
15 witnesses and present documentary evidence in his defense when
16 permitting him to do so will not be unduly hazardous to
17 institutional safety or correctional goals; and 5) aid from a
18 fellow inmate or staff member where an illiterate inmate is
19 involved, or where the complexity of the issues makes it unlikely
20 that the inmate will be able to collect and present the evidence
21 necessary for an adequate comprehension of the case. Wolff v.
22 McDonnell, 418 U.S. at 564, 566, 570.

23 Further, where good-time credits are a protected liberty
24 interest, the decision to revoke credits must be supported by
25 some evidence in the record. Superintendent v. Hill, 472 U.S. at
26 454. The Court in Hill stated:

27 We hold that the requirements of due process are
28 satisfied if some evidence supports the decision by the
prison disciplinary board to revoke good time credits.
This standard is met if "there was some evidence from

1 which the conclusion of the administrative tribunal
2 could be deduced...." United States ex rel. Vajtauer v.
3 Commissioner of Immigration, 273 U.S., at 106, 47
4 S.Ct., at 304. Ascertaining whether this standard is
5 satisfied does not require examination of the entire
6 record, independent assessment of the credibility of
7 witnesses, or weighing of the evidence. Instead, the
8 relevant question is whether there is any evidence in
9 the record that could support the conclusion reached by
10 the disciplinary board. See ibid.; United States ex
11 rel. Tisi v. Tod, 264 U.S. 131, 133-134, 44 S.Ct. 260,
12 260-261, 68 L.Ed. 590 (1924); Willis v. Ciccone, 506
13 F.2d 1011, 1018 (CA8 1974).

14 Superintendent v. Hill, 472 U.S. at 455-56. The Constitution
15 does not require that the evidence logically preclude any
16 conclusion other than the conclusion reached by the disciplinary
17 board; rather, there need only be some evidence in order to
18 ensure that there was some basis in fact for the decision.
19 Superintendent v. Hill, 472 U.S. at 457.

20 In Bostic v. Carlson, 884 F.2d 1267, 1270-71 (9th Cir.
21 1989), an inmate was found to have committed the disciplinary
22 violation of possession of contraband (stolen sandwiches) and was
23 assessed a forfeiture of thirty days of credit. In the incident
24 report, the violation was described as "stealing." The prisoner
25 sought relief under § 2241 for alleged due process violations.
26 The court stated the following with respect to the adequacy of
27 the notice given to the prisoner:

28 Nor does appellant assert that the officer's
description of the incident as "stealing" rather than
as "possession of contraband" in the incident report
deprived him of the opportunity to present a proper
defense. The incident report described the factual
situation that was the basis for the finding of guilt
of possession of contraband and alerted Bostic that
he would be charged with possessing something he did
not own. Cf. Wolff, 418 U.S. at 563-64, 94 S.Ct. at
2978-79 (stating that "the function of [the] notice
[of a claimed violation] is to give the charged party
a chance to marshal the facts in his defense and to
clarify what the charges are"). The incident report

1 adequately performed the functions of notice described
2 in *Wolff*. See *id.*

3 Bostic v. Carlson, 884 F.2d at 1270-71.

4 Here, the incident report received by Petitioner before the
5 occurrence of both the unit disciplinary committee hearing and
6 the DHO hearing described the basic facts of the allegation (the
7 discovery of the sharpened metal object magnetized and hidden on
8 the bottom of Petitioner's cell door). The incident report thus
9 unambiguously described the factual situation that was the basis
10 for the finding of guilt.

11 Petitioner has not stated any facts or mounted any argument
12 regarding how the failure to receive a copy of the later unit
13 discipline committee report prejudiced him or affected his
14 ability to defend against the charge. The Court notes that
15 Petitioner admitted ownership of the weapon. Petitioner has not
16 shown that any technical defect with respect to receipt of the
17 committee report resulted in diminution of his opportunity to
18 marshal the facts in his defense or to respond to clearly
19 identified charges. In view of the specificity of the
20 allegations, and considering Petitioner's admission of guilt, it
21 is clear that Petitioner had an opportunity to marshal the facts
22 in his defense and to clarify what the charges were. The
23 incident report thus adequately performed the essential functions
24 of notice that were determinative in Bostic and detailed in
25 Wolff.

26 Therefore, the Court concludes that Petitioner has failed to
27 show a due process violation with respect to notice of the
28 charges.

1 To the extent that Petitioner challenges the disciplinary
2 finding itself, Petitioner's challenge lacks merit. The
3 Petitioner's admission, the report of the officer who discovered
4 the weapon, and the photograph constituted some evidence in
5 support of the decision. Cf., Superintendent v. Hill, 472 U.S.
6 at 447-48, 456-57 (an officer's testimony and report of
7 discovering an assaulted inmate, along with corroborating
8 circumstantial evidence, were held sufficient to support a
9 finding of assault).

10 In summary, Petitioner has failed to establish a violation
11 of his right to due process of law. Accordingly, Petitioner's
12 due process claim or claims will be denied.

13 V. Disposition

14 The Court concludes that Petitioner failed to establish his
15 claims, and the petition should be denied.

16 Accordingly, it is ORDERED that:

17 1) Petitioner's petition for writ of habeas corpus is
18 DENIED; and

19 2) The Clerk is DIRECTED to enter judgment for Respondent.

20 IT IS SO ORDERED.

21 **Dated: December 20, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE