

1 County Superior Court sentenced Petitioner to an indeterminate term of life without the
2 possibility of parole on count one and consecutive terms of life with the possibility of parole on
3 counts 2 and 3.

4 On June 14, 2014, Petitioner, then confined at the Richard J. Donovan Correctional Center
5 at San Diego, California, was disciplined following an argument with a fellow inmate, Mr.
6 Williams, that escalated to a physical confrontation. Williams took offense when Petitioner
7 brushed against Williams in an attempt to hurry to breakfast. As Correctional Officer R. Allan
8 arrived on the scene, Williams threw a punch at Petitioner. Petitioner contends that the punch did
9 not connect; Allan reported that Williams actually struck Petitioner. In any event, Allan ordered
10 both inmates to “prone out” on the ground. Williams lay down, but Petitioner remained standing.
11 Allan again ordered Petitioner down and threatened to use pepper spray if Petitioner did not
12 comply. According to Allan, Petitioner repeatedly struck Allan on his face and upper body,
13 inflicting facial cuts and bruises, a fat lip, and various cuts on Allan’s upper body before Allan
14 was able to restrain Petitioner physically. Although the photocopies of photographs submitted to
15 the Court are unclear, the disciplinary hearing officer found that the photographs of Allan
16 documented his injuries. Petitioner denies that he struck Allan and argues that he did not commit
17 battery upon a peace officer because he did not hit Williams back. Petitioner was cited for battery
18 on a peace officer resulting in use of force (CCR § 3005(d)(1)).

19 In a written statement, Allan confirmed that he did not see Petitioner strike Williams.
20 Williams admitted he struck Petitioner who continued to advance on him. Additional witnesses
21 confirming Allan’s account included Correctional Officer L. Romero, Correctional Officer
22 Adams, and Correctional Sergeant Smith.

23 Following a disciplinary hearing, Petitioner was found guilty and assessed 150 days of
24 worktime credit and 90 days of Group “C” privilege (7/18/2014-10/16/2014), and was referred to
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1 the Institutional Classification Committee with a recommendation for assessment of a Security
2 Housing Unit (SHU) term. Petitioner filed institutional appeals, all of which upheld the
3 disciplinary hearing.

4 On August 27, 2014, the San Diego County Superior Court denied Petitioner's petition for
5 writ of habeas corpus. The California Court of Appeals denied the petition on October 31, 2014.
6 The California Supreme Court summarily denied the petition on September 30, 2015.
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8 **II. No Habeas Relief for Indeterminate Sentences**

9 The instant petition requires the Court to analyze recent case law addressing whether
10 losses of good time credits in prison disciplinary proceedings are properly addressed in habeas
11 corpus or in § 1983 civil rights actions.

12 In *Nettles v. Grounds* (788 F.3d 992 (9th Cir. 2015), rehearing *en banc* granted ___ F.3d
13 ___, 2016WL386022 (9th Cir. Jan. 20, 2016)), the Ninth Circuit Court of Appeals sought to resolve
14 the ambiguity of when an inmate seeking return of good time credits lost in a disciplinary action
15 must pursue a habeas corpus petition under 28 U.S.C. § 2254 and when he must file a § 1983
16 complaint. “[R]elief is available to a prisoner under the federal habeas statute only if success on
17 the claim would ‘necessarily spell speedier release’ from custody, which *Skinner* [*v. Switzer*, 562
18 U.S. 521(2011)] suggested would include termination of custody, acceleration of the future date
19 of release from custody, or reduction of the level of custody.” *Nettles*, 788 F.3d at 1001 (quoting
20 *Skinner*, 562 U.S. at 533-34).
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23 *Nettles*, who had been sentenced to life with the possibility of parole, sought restoration of
24 30 lost good time credits and expungement of the rule violation that resulted in the lost credits.
25 788 F.3d at 995-96. The Ninth Circuit opinion concluded that habeas jurisdiction was not
26 established because neither restoring the lost credits nor expunging the rule violation would
27 necessarily result in *Nettles*' being released from prison more quickly. *Id.* at 1002-04. The Court
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1 denied habeas jurisdiction because of Nettles' indeterminate sentence: "Without knowing how
2 many years Nettles will serve before the Board finds him suitable for parole or the length of his
3 base term, we cannot conclude that the restoration of the lost good-time credits would necessarily
4 affect the duration of Nettles' confinement if and when the Board finds him suitable for parole."

5 *Id.* at 1004.

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7 The Ninth Circuit also rejected the reasoning that expunging the disciplinary violation
8 would necessarily reduce Nettles' term by removing "roadblocks to parole." *Id.* at 1003. The
9 court reasoned that the effect of expunging the rule violation and restoring the lost credits was
10 insufficient to provide habeas jurisdiction:

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12 While the 2008 rules violation report will likely have some effect
13 on the Board's consideration, there is no basis for concluding that
14 the expungement of this report from the record will "necessarily
15 spell speedier release for Nettles." *See Skinner*, 131 S.Ct. at 1299
16 n. 13. Nor will it necessarily terminate Nettles's custody, accelerate
17 the future date of his release, or reduce his level of custody. *See id.*
18 The effect of a rules violation on parole suitability is a matter of
19 state law and regulation, and, under California law, a rules violation
20 is merely one factor the parole board considers to determine
21 whether a prisoner "constitutes a current threat to public safety."
22 *Lawrence*, 82 Cal.Rptr.3d 169. . . ; it is not determinative, *see Cal.*
23 *Code regs. Tit. 15, § 2281(b)* (directing the parole board to consider
24 "[a]ll relevant, reliable information" in determining suitability for
25 parole). . . . Even if successful, Nettles "will not necessarily
26 shorten the length of his confinement" because "[t]he parole board
27 will still have the authority to deny . . . parole on the basis of any of
28 the grounds presently available to it in evaluating such a request."
See Ramirez, 334 F.3d at 859 (first alteration in original) (internal
quotation marks omitted). As *Close* pointed out, even when a
challenge to prison disciplinary proceedings "*may* affect the
duration of time to be served (by bearing on the award or
revocation of good-time credits)," where "it is not necessarily so," a
challenge to such proceedings "raises no claim on which habeas
relief could have been granted." 540 U.S. at 754-55 . . . (emphasis
added). Therefore, this claim is not cognizable in habeas.

29 *Nettles*, 788 F.3d at 1003-04.

30 Here, Petitioner is subject to an indeterminate sentence of life without parole. Because
31 restoring Petitioner's lost good-time credits and expunging the disciplinary findings are

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1 unlikely to result in an earlier release date, habeas jurisdiction is not available for Petitioner's
2 claims.

3 **III. Certificate of Appealability**

4 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
5 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
6 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
7 certificate of appealability is 28 U.S.C. § 2253, which provides:

8 (a) In a habeas corpus proceeding or a proceeding under section
9 2255 before a district judge, the final order shall be subject to
10 review, on appeal, by the court of appeals for the circuit in which
the proceeding is held.

11 (b) There shall be no right of appeal from a final order in a
12 proceeding to test the validity of a warrant to remove to another
13 district or place for commitment or trial a person charged with a
criminal offense against the United States, or to test the validity of
such person's detention pending removal proceedings.

14 (c) (1) Unless a circuit justice or judge issues a certificate of
15 appealability, an appeal may not be taken to the court of appeals
from—

16 (A) the final order in a habeas corpus proceeding in
17 which the detention complained of arises out of process issued by a
State court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph
20 (1) only if the applicant has made a substantial showing of the
denial of a constitutional right.

21 (3) The certificate of appealability under paragraph (1) shall
22 indicate which specific issues or issues satisfy the showing required
by paragraph (2).

23 If a court denies a habeas petition, the court may only issue a certificate of appealability
24 "if jurists of reason could disagree with the district court's resolution of his constitutional claims
25 or that jurists could conclude the issues presented are adequate to deserve encouragement to
26 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

27 Although the petitioner is not required to prove the merits of his case, he must demonstrate
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1 "something more than the absence of frivolity or the existence of mere good faith on his . . .
2 part." *Miller-El*, 537 U.S. at 338.

3 The Court finds that reasonable jurists would not find the Court's determination that
4 Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of
5 encouragement to proceed further. Petitioner has not made the required substantial showing of
6 the denial of a constitutional right. Accordingly, the Court declines to issue a certificate of
7 appealability.

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9 **IV. Conclusion and Recommendation**

10 The undersigned RECOMMENDS that the Court dismiss with prejudice the Petition for
11 writ of habeas corpus and decline to issue a certificate of appealability.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **twenty**
14 **one (21) days** after being served with these Findings and Recommendations, either party may file
15 written objections with the Court. The document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and
17 filed within **seven (7) days** after service of the objections. The parties are advised that failure to
18 file objections within the specified time may constitute waiver of the right to appeal the District
19 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*
20 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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24 IT IS SO ORDERED.

25 Dated: March 2, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE