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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7

8 ANDRES CASTRO,

No. C 14-465 SI (pr)

9 Petitioner,

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

10 v.

11 E. SPEARMAN, warden,

12 Respondent.
13 _____/

14 **INTRODUCTION**

15 Andres Castro filed this *pro se* action for writ of habeas corpus pursuant to 28 U.S.C.
16 § 2254 to challenge a prison disciplinary decision that resulted in a forfeiture of time credits.
17 The court reviewed the petition and found cognizable a claim that Castro's due process rights
18 were violated in that the disciplinary decision was not supported by sufficient evidence.
19 Respondent has filed an answer and Castro has filed a traverse. For the reasons explained
20 below, the petition will be denied.
21

22 **BACKGROUND**

23 A CDC-115 rule violation report was written by correctional officer ("C/O") Meade
24 charging Castro with "masturbation without exposure" on May 5, 2012 Docket # 4-1 at 19. C/O
25 Meade wrote that, at approximately 11:15 a.m. on May 4, 2012, while she was assigned as a
26 central tower officer and observing yard recall (i.e., the time when inmates are returned to their
27 housing units):
28

1 I observed Inmate CASTRO, P-68358, EW-314L, standing outside the inmate phone line.
2 Inmate CASTRO was standing away from the other inmates waiting near the fence. As
3 the inmate[s] on the yard were forming a line for yard recall, a large group was formed
4 that Inmate CASTRO took advantage of to shield his action from the view of the yard
5 officers. Inmate CASTRO positioned himself in front of the phone lines and then looked
6 up towards me. He then grabbed his genitals with his left hand and began to
masturbating over his pants, on what appeared to be an erect penis. Inmate CASTRO
was squeezing and pulling in a repetitive and lateral movement to his genitals on the
outside of his pants. I believe Inmate CASTRO's intention was for me to observe him
masturbating. I conducted (sic) the yard officer via institutional radio to identify Inmate
CASTRO by using his state I.D. At 1345 hours, I then contacted Sergeant Ramirez.

7 *Id.*

8 An investigative employee was appointed for the CDC-115. The investigative employee
9 interviewed Castro twice; Castro told the investigator that he had not seen the reporting officer,
10 he "'never look[ed] up at towers,'" did not make a gesture towards or over his genitals, and did
11 not grab his genitals but instead had "'just put [his] hand on the side of [his] pants.'" *Id.* at 22-23.
12 The investigative employee interviewed inmate Hurtado, who said he "'was not with [Castro]
13 on the yard.'" *Id.* at 23. The investigative employee also interviewed inmate Torres, who stated
14 that he was with Castro but had not seen him doing anything before going into the building. *Id.*
15 The investigative employee also took a statement from C/O Meade, who had reported the
16 offense. C/O Meade stated that "'Castro was fondling himself at yard recall while looking up
17 at me in the tower. Then I had yard staff identify him for me by using his State Identification
18 Card.'" *Id.*

19 A disciplinary hearing was held on May 31, 2012, at which Castro pled not guilty.
20 Docket # 4-1 at 20. According to the hearing officer's report, Castro stated: "'I did not do
21 anything. I was at the table trying to sell greeting cards when they announced yard recall. I took
22 approximately five to ten minutes to get my cards together. Then I got in line for yard-recall.
23 It took a lot longer that day. Inmate HURTADO was with me in line waiting to go in. He and
24 I was (sic) playing around, then we all went in.'" *Id.* The hearing officer also had before him
25 the investigative employee's reports of the statements from the several persons interviewed.

26 The hearing officer found Castro guilty of "masturbation without exposure," based on the
27 description of the offense in the rule violation report, the reporting employee's statement to the
28 investigative employee, and the mental health assessment form which documented that there

1 were no mental health factors that contributed to the misconduct or precluded an understanding
2 of the disciplinary process. *Id.* at 20-21.¹ The discipline imposed on Castro for this offense was
3 (a) a loss of 60 days of time credits and (b) a loss of all privileges for 180 days because it was
4 his second offense. *Id.* at 19.

5 Castro filed unsuccessful inmate appeals about the disciplinary decision. He also filed
6 unsuccessful state court habeas petitions challenging the disciplinary decision.

7 Castro then filed this action. Respondent has filed an answer and Castro has filed a
8 traverse.

10 JURISDICTION AND VENUE

11 This court has subject matter jurisdiction over this habeas action for relief brought under
12 28 U.S.C. § 2254. 28 U.S.C. § 1331. This action is in the proper venue because the petition
13 concerns the execution of a sentence for a prisoner incarcerated in Monterey County, California,
14 which is within this judicial district. 28 U.S.C. §§ 84, 2241(d).

16 EXHAUSTION

17 Prisoners in state custody who wish to challenge collaterally in federal habeas
18 proceedings either the fact or length of their confinement are required first to exhaust state
19 judicial remedies, either on direct appeal or through collateral proceedings, by presenting the
20 highest state court available with a fair opportunity to rule on the merits of each and every claim
21 they seek to raise in federal court. *See* 28 U.S.C. § 2254(b), (c). State court remedies have been
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23 ¹The offense was listed on the rule violation report as a violation of section 3007 of Title 15 of
24 the California Code of Regulations. Section 3007 states: "Inmates may not participate in illegal sexual
25 acts. Inmates are specifically excluded in laws which remove legal restraints from acts between
26 consenting adults. Inmates must avoid deliberately placing themselves in situations and behaving in a
27 manner which is designed to encourage illegal sexual acts." Another section in the regulations provides:
28 "Sexual Disorderly Conduct means every person who touches, without exposing, his or her genitals,
buttocks or breasts in a manner that demonstrates it is for the purpose of sexual arousal, gratification,
annoyance, or offense, and that any reasonable person would consider this conduct offensive." 15 Cal.
Code Regs. § 3000. A finding of guilt on a charge of sexual disorderly conduct can result in discipline
including loss of privileges (§ 3315(f)(5)(K)) and 31-60 days' loss of credits (§ 3323(g)(7)). Castro did
not contend here or in his state court habeas petitions that section 3000 did not cover his conduct or that
the citation of that section in some way negated the validity of the disciplinary decision.

1 exhausted for the one claim in the petition.
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3 STANDARD OF REVIEW

4 This court may entertain a petition for writ of habeas corpus “in behalf of a person in
5 custody pursuant to the judgment of a State court only on the ground that he is in custody in
6 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).
7 Section 2254 is the proper jurisdictional basis for a habeas petition attacking the execution of
8 a sentence by a petitioner in custody pursuant to the judgment of a state court. *See White v.*
9 *Lambert*, 370 F.3d 1002, 1004 (9th Cir. 2004), *overruled on other grounds by Hayward v.*
10 *Marshall*, 603 F.3d 546, 554 (9th Cir. 2010).

11 The Antiterrorism And Effective Death Penalty Act of 1996 (“AEDPA”) amended
12 § 2254 to impose new restrictions on federal habeas review. A petition may not be granted with
13 respect to any claim that was adjudicated on the merits in state court unless the state court's
14 adjudication of the claim: “(1) resulted in a decision that was contrary to, or involved an
15 unreasonable application of, clearly established Federal law, as determined by the Supreme
16 Court of the United States; or (2) resulted in a decision that was based on an unreasonable
17 determination of the facts in light of the evidence presented in the State court proceeding.” 28
18 U.S.C. § 2254(d).

19 “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state court
20 arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or
21 if the state court decides a case differently than [the] Court has on a set of materially
22 indistinguishable facts.” *Williams (Terry) v. Taylor*, 529 U.S. 362, 412-13 (2000).

23 “Under the ‘unreasonable application’ clause, a federal habeas court may grant the writ
24 if the state court identifies the correct governing legal principle from [the] Court’s decisions but
25 unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at 413. “[A] federal
26 habeas court may not issue the writ simply because that court concludes in its independent
27 judgment that the relevant state-court decision applied clearly established federal law
28 erroneously or incorrectly. Rather, that application must also be unreasonable.” *Id.* at 411. A

1 federal habeas court making the “unreasonable application” inquiry should ask whether the state
2 court’s application of clearly established federal law was “objectively unreasonable.” *Id.* at 409.

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4 **DISCUSSION**

5 An inmate in California is entitled to due process before being disciplined when the
6 discipline imposed will inevitably affect the duration of his sentence. *See Sandin v. Conner*, 515
7 U.S. 472, 484, 487 (1995). The process due in such a prison disciplinary proceeding includes
8 written notice, time to prepare for the hearing, a written statement of decision, allowance of
9 witnesses and documentary evidence when not unduly hazardous, and aid to the accused where
10 the inmate is illiterate or the issues are complex. *Wolff v. McDonnell*, 418 U.S. 539, 564-67
11 (1974). The Due Process Clause only requires that prisoners be afforded those procedures
12 mandated by *Wolff* and its progeny; it does not require that a prison comply with its own, more
13 generous procedures. *See Walker v. Sumner*, 14 F.3d 1415, 1419-20 (9th Cir. 1994), *overruled*
14 *on other grounds by Sandin*, 515 U.S. 472.

15 The revocation of good-time credits does not comport with the minimum requirements
16 of procedural due process in *Wolff* unless the findings of the prison disciplinary decision-maker
17 are supported by some evidence in the record. *See Superintendent v. Hill*, 472 U.S. 445, 454
18 (1985). There must be "some evidence" from which the conclusion of the decision-maker could
19 be deduced. *Id.* at 455. An examination of the entire record is not required nor is an
20 independent assessment of the credibility of witnesses or weighing of the evidence. *Id.* The
21 relevant question is whether there is any evidence in the record that could support the conclusion
22 reached by the disciplinary decision-maker. *Id.* This standard is considerably lower than that
23 applicable in criminal trials. *Id.* at 456.

24 Here, there was sufficient evidence to support the disciplinary decision. The evidence
25 included: (a) C/O Meade's written description in the CDC-115 that she had observed Castro
26 engaged in activity that looked to her like he was masturbating; (b) C/O Meade's statement to
27 the investigative employee that she observed Castro fondling himself; and (c) the statement of
28 the mental health provider that there was no mental health concern that contributed to the

1 misconduct. This is enough to satisfy the extremely deferential "some evidence" standard.

2 Castro makes various arguments in an effort to undermine the disciplinary decision. Most
3 notably, he argues that the CDC-115 shows that C/O Meade waited two hours to determine his
4 identity. Docket # 1 at 11. This is not a fair reading of the CDC-115: C/O Meade does not state
5 therein when she contacted the yard officer to learn Castro's identity, and instead only states that
6 she contacted sergeant Ramirez two-and-a-half hours after the incident. *See* Docket # 4-1 at 19.
7 Castro also tries to chip away at the credibility of C/O Meade's report by arguing that his penis
8 was too small for C/O Meade to have been able to see from her vantage point in the tower, that
9 he was right-handed, that no semen was found in his pants, and that an inmate wouldn't
10 masturbate on the yard because he would be assaulted by other inmates if observed doing so.
11 *See* Docket # 1 at 12; Docket # 5 at 4-5. These arguments do not demonstrate that there was not
12 some evidence to support the disciplinary decision. Even if Castro's evidence and arguments had
13 been presented at the disciplinary hearing and could have led the hearing officer to reach a
14 different conclusion, this court is not compelled to set aside the decision reached by the hearing
15 officer. The fact that an inmate offers a defense does not mean that the hearing officer must
16 accept it as true. "The Federal Constitution does not require evidence that logically precludes
17 any conclusion but the one reached by the disciplinary board." *Superintendent v. Hill*, 472 U.S.
18 at 457. The evidence supporting the disciplinary decision was constitutionally sufficient and
19 reliable. Castro's right to due process was not violated by prison officials' decision to find him
20 guilty.

21 The state court's rejection of his claim was not contrary to or an unreasonable application
22 of clearly established federal law. As the last reasoned decision, the Monterey County Superior
23 Court's decision is the decision to which § 2254(d) is applied. That court correctly identified the
24 "some evidence" legal standard from *Superintendent v. Hill*, and reasonably applied it.
25 *See* Docket # 4-5 at 33-35. Castro is not entitled to the writ of habeas corpus.

26 A certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c). This is not a case
27 in which "reasonable jurists would find the district court's assessment of the constitutional
28 claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).


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CONCLUSION

The petition for writ of habeas corpus is DENIED on the merits. The clerk shall close the file.

IT IS SO ORDERED.

Dated: December 15, 2014



SUSAN ILLSTON
United States District Judge