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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Fox Joseph Salerno,

Plaintiff,

vs.

Charles Ryan; et al.,

Defendants.

) No. CV-10-1633-PHX-ROS

) **ORDER**

Pending before the Court is Magistrate Judge Anderson’s Report and Recommendation (“R&R”). (Doc. 16). For the reasons below, the Court will adopt the R&R.

BACKGROUND

Petitioner filed a petition for writ of habeas corpus (the “Petition”) under 28 U.S.C. § 2254. (Doc. 1). The Petition argues his due process rights were violated when (1) he was convicted of a disciplinary violation without sufficient evidence; and (2) proper procedures and process were not followed in the disciplinary hearings. (Doc. 1). Respondents answered and Petitioner replied.

Petitioner is incarcerated in the Arizona Department of Corrections. In a January 11, 2008 letter, Petitioner accused a correctional officer “CO III A. Sambora” (“Sambora”) of failing to process Petitioner’s grievance requests. (Doc. 8, Ex. A, at 38). Petitioner wrote a letter to Sambora stating Petitioner was “going to contact a friend and find [her] home address and . . . drop off [Petitioner’s] grievance personally.” (Id.). The letter also stated

1 **A. Standard of Review**

2 A district court “must make a de novo determination of those portions of the report
3 . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the
4 findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C). A court
5 need review only those portions objected to by a party, meaning a court can adopt without
6 further review all unobjected to portions. *See United States v. Reyna-Tapia*, 328 F.3d 1114,
7 1121 (9th Cir. 2003).

8 **B. R&R is Adopted in Full**

9 Plaintiff objects to only one aspect of the R&R: the determination that the letter in
10 question amounted to a threat. (Doc. 17). Petitioner argues this determination was error
11 because: (1) “the court failed to consider [the] entire letter”; (2) the “disciplinary conviction
12 classified [the] letter as extortion” and “it is improper for [the] court to ignore extortion part
13 and only rule on threatening”; and (3) the R&R improperly took into account that Petitioner
14 is a prisoner and the letter was directed at a prison guard. (*Id.*).

15 Under *Superintendent v. Hill*, due process requires “some evidence” support the
16 administrative decision. 472 U.S. 445, 454 (1985). “An examination of the entire record is
17 not required nor is an independent assessment of the credibility of the witnesses or weighing
18 of the evidence.” *Id.* The question is whether the disciplinary board’s conclusion is support
19 by any evidence that bears some indicia of reliability. *Id.*; *Cato v. Rushen*, 824 F.2d 703,
20 704-05 (9th Cir. 1987). “[D]ue process is satisfied when the record contains some factual
21 information from which a committee can reasonably conclude that the information was
22 reliable.” *Carillo v. Stainer*, 1997 WL 16312, *8 (N.D. Cal. Jan. 6, 1997).

23 Here, there is “some evidence” the letter was a threat. In the letter, Petitioner stated
24 he was going to send a “friend” to “find [Sambora’s] home address and . . . drop off
25 [Petitioner’s] grievance personally.” The letter also stated Petitioner was “going to cost [her]
26 so much time, money and aggravation until [she] regret[s] violating policy,” and that this “is
27 a way to get you to do your job.” Petitioner also admitted to being “mad” when he wrote the
28 letter. This evidence satisfies the requirement that the administrative decision be supported

1 by “some evidence.” *Hill*, 472 U.S. at 454.

2 The R&R need not recite the entire letter to find “some evidence” of a threat. The fact
3 that the R&R upheld the disciplinary decision based on a threat rather than extortion also
4 does not change the fact that there was “some evidence” of a threat. Finally, Petitioner has
5 not cited any authority supporting his argument that his due process rights were violated
6 because the R&R acknowledged the “actors.” The circumstances of a statement may be
7 considered in determining whether the contents were threatening. As such, Petitioner’s
8 objection is without merit, and the R&R will be adopted in full.

9 Accordingly,

10 **IT IS ORDERED** the Report and Recommendation (**Doc. 16**) is **ADOPTED IN**
11 **FULL**. The Petition (**Doc. 1**) is **DENIED** and **DISMISSED WITH PREJUDICE**.

12 **IT IS ORDERED** a Certificate of Appealability and leave to proceed *in forma*
13 *pauperis* on appeal is denied because Petitioner has not made a substantial showing of the
14 denial of a constitutional right.

15 DATED this 23rd day of November, 2011.

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Roslyn O. Silver
Chief United States District Judge