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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES STRAIN,

1: 06 CV 01215 LJO WMW HC

Petitioner,

MEMORANDUM OPINION AND ORDER RE
RESPONDENT’S MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS

v.

[Doc. 9]

KEN CLARK, WARDEN,

ORDER DENYING CERTIFICATE OF
APPEALABILITY

Respondent.

Petitioner is a prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2254. Pending before the court is Respondent’s motion to dismiss the petition.

PROCEDURAL HISTORY

On March 16, 2005, Petitioner was issued a Rules Violation Report (“RVR”) for disobeying a direct order. A disciplinary hearing was held on April 6, 2005. At the hearing, Petitioner was found guilty of the charge and assessed a thirty-day credit forfeiture. Strain successfully challenged that proceeding through an administrative appeal, and a new disciplinary hearing was ordered.

The original RVR was reissued for a rehearing on August 8, 2005. The matter was reheard

1 on August 29, 2005, and Petitioner was again found guilty and reassessed a thirty-day credit loss.
2 Strain was informed that his lost credit would be restored if he remained disciplinary free for three
3 months following August 8, 2005.

4 A little over three months later, on November 30, 2005, a classification committee restored
5 Petitioner's thirty days of lost credit.

6 LEGAL STANDARD

7 Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant
8 to the judgment of a state court if the custody is in violation of the Constitution or laws or treaties of
9 the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 120 S.Ct.
10 1495, 1504 fn.7 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by
11 the United States Constitution.

12 On April 24, 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act of
13 1996 ("AEDPA"), which applies to all petitions for writ of habeas corpus filed after its enactment.
14 Lindh v. Murphy, 521 U.S. 320, 117 S.Ct. 2059, 2063 (1997), *cert. denied*, 522 U.S. 1008, 118 S.Ct.
15 586 (1997); Jeffries v. Wood, 114 F.3d 1484, 1499 (9th Cir. 1997) (quoting Drinkard v. Johnson, 97
16 F.3d 751, 769 (5th Cir.1996), *cert. denied*, 520 U.S. 1107, 117 S.Ct. 1114 (1997), *overruled on other*
17 *grounds by Lindh v. Murphy*, 521 U.S. 320, 117 S.Ct. 2059 (1997) (holding AEDPA only applicable
18 to cases filed after statute's enactment). The instant petition was filed after the enactment of the
19 AEDPA, thus it is governed by its provisions.

20 This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody
21 pursuant to the judgment of a State court only on the ground that he is in custody in violation of the
22 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

23 The AEDPA altered the standard of review that a federal habeas court must apply with
24 respect to a state prisoner's claim that was adjudicated on the merits in state court. Williams v.
25 Taylor, 120 S.Ct. 1495, 1518-23 (2000). Under the AEDPA, an application for habeas corpus will
26 not be granted unless the adjudication of the claim "resulted in a decision that was contrary to, or
27 involved an unreasonable application of, clearly established Federal law, as determined by the
28 Supreme Court of the United States;" or "resulted in a decision that was based on an unreasonable

1 determination of the facts in light of the evidence presented in the State Court proceeding.” 28
2 U.S.C. § 2254(d); Lockyer v. Andrade, 123 S.Ct. 1166, 1173 (2003) (disapproving of the Ninth
3 Circuit’s approach in Van Tran v. Lindsey, 212 F.3d 1143 (9th Cir. 2000)); Williams v. Taylor, 120
4 S.Ct. 1495, 1523 (2000). “A federal habeas court may not issue the writ simply because that court
5 concludes in its independent judgment that the relevant state-court decision applied clearly
6 established federal law erroneously or incorrectly.” Lockyer, at 1174 (citations omitted). “Rather,
7 that application must be objectively unreasonable.” Id. (citations omitted).

8 While habeas corpus relief is an important instrument to assure that individuals are
9 constitutionally protected, Barefoot v. Estelle, 463 U.S. 880, 887, 103 S.Ct. 3383, 3391-3392 (1983);
10 Harris v. Nelson, 394 U.S. 286, 290, 89 S.Ct. 1082, 1086 (1969), direct review of a criminal
11 conviction is the primary method for a petitioner to challenge that conviction. Brecht v.
12 Abrahamson, 507 U.S. 619, 633, 113 S.Ct. 1710, 1719 (1993). In addition, the state court’s factual
13 determinations must be presumed correct, and the federal court must accept all factual findings made
14 by the state court unless the petitioner can rebut “the presumption of correctness by clear and
15 convincing evidence.” 28 U.S.C. § 2254(e)(1); Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769
16 (1995); Thompson v. Keohane, 516 U.S. 99, 116 S.Ct. 457 (1995); Langford v. Day, 110 F.3d 1380,
17 1388 (9th Cir. 1997).

18 DISCUSSION

19 Respondent moves to dismiss this petition on the ground that Petitioner has failed to state any
20 claims subject to federal review. Petitioner has not responded to the motion.

21 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a
22 petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the
23 Petitioner is not entitled to relief in the district court” The Advisory Committee Notes to Rule 5
24 of the Rules Governing § 2254 Cases state that “an alleged failure to exhaust state remedies may be
25 raised by the Attorney General, thus avoiding the necessity of a formal answer as to that ground.”
26 The Ninth Circuit has referred to a respondent’s motion to dismiss as a request for the court to
27 dismiss under Rule 4 of the Rules Governing § 2254 Cases. See, e.g., O’Bremski v. Maass, 915
28 F.2d 418, 420 (1991); White v. Lewis, 874 F.2d 599, 602-03 (9th Cir. 1989); Hillery v. Pulley, 533

1 F.Supp. 1189, 1194 & n.12 (E.D. Cal. 1982). Based on the Rules Governing Section 2254 Cases and
2 case law, the court will review Respondent's motion to dismiss pursuant to its authority under Rule
3 4.

4 In this case, Petitioner challenges the prison disciplinary action described above. Petitioner
5 contends that his federal Constitutional rights were violated because the evidence is insufficient to
6 support a guilty finding, the offense was classified as a serious rules violation, and proffered
7 documentary evidence was not considered. In his motion to dismiss, Respondent contends that
8 Petitioner does not state a claim for federal habeas corpus relief because he does not challenge the
9 fact or duration of his confinement. The court must agree.

10 As set forth above, this court may entertain a petition for writ of habeas corpus "in behalf of a
11 person in custody pursuant to the judgment of a State court only on the ground that he is in custody
12 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Thus,
13 a habeas petition is a proper means for an inmate to challenge the fact or duration of his
14 confinement. Preiser v. Rodriguez, 411 U.S. 474, 485 - 86 (1973); Wilkinson v. Dotson, 544 U.S.
15 74, 78-79 (2005). A habeas petition is not proper, however, when the fact or duration of an inmate's
16 confinement is not at issue. Bedeau v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)(habeas petition no
17 longer proper where petitioner had been released on parole and no longer sought transfer to
18 community treatment center). Thus, the Ninth Circuit has held that "habeas jurisdiction is absent,
19 and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily
20 shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003).

21 Here, Petitioner's claims arise from the disciplinary hearing held on August 29, 2005.
22 However, as Respondent argues, Petitioner's incarceration time was unaffected by the disciplinary
23 action because all of his lost credit was subsequently restored. Because Petitioner has no lost credit
24 to reclaim, he cannot shorten the duration of his sentence through this action. Therefore, the court
25 finds that this petition does not dispute the fact or duration of Petitioner's confinement and
26 consequently does not state grounds for federal habeas relief. The court must thus conclude under
27 Ramirez that it lacks habeas jurisdiction over this action.

28 Petitioner may seek to appeal from the court's judgment in this action. Petitioner may not

1 proceed on such an appeal without a certificate of appealability. The controlling statute, 28 U.S.C. §
2 2253, provides as follows:

- 3 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,
4 the final order shall be subject to review, on appeal, by the court of appeals for the circuit in
5 which the proceeding is held.
6 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a
7 warrant to remove to another district or place for commitment or trial a person charged with a
8 criminal offense against the United States, or to test the validity of such person's detention
9 pending removal proceedings.
10 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
11 be taken to the court of appeals from--
12 (A) the final order in a habeas corpus proceeding in which the detention complained of arises
13 out of process issued by a State court; or
14 (B) the final order in a proceeding under section 2255.
15 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made
16 a substantial showing of the denial of a constitutional right.
17 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or
18 issues satisfy the showing required by paragraph (2).

19 In the present case, the court finds no denial of a constitutional right. Accordingly, a certificate of
20 appealability will be denied.

21
22 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 23 1) Respondent's motion to dismiss is GRANTED;
24 2) This petition for writ of habeas corpus is DISMISSED for failure to state a claim upon which
25 federal habeas corpus relief can be granted;
26 3) A certificate of appealability is DENIED; and
27 3) The Clerk of the Court is directed to enter judgment for Respondent and to close this case.

28 IT IS SO ORDERED.

Dated: February 6, 2008

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE