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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

WILLIE TYRONE COOPER,)	NO. 1:07-cv-00214-AWI-GSA-PC
)	
Plaintiff,)	FINDINGS AND
)	RECOMMENDATION RE
v.)	PLAINTIFF'S MOTION FOR
)	SUMMARY JUDGMENT
JEANNE WOODFORD, M.D., et al.,)	(Doc. 57)
)	
Defendants.)	OBJECTIONS DUE IN THIRTY
_____)	DAYS

Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Pending before the Court is Plaintiff's motion for summary judgment. Defendants have opposed the motion.

I. Procedural History

This action proceeds on the September 2, 2008, second amended complaint. The events that give rise to this lawsuit occurred at Kern Valley State Prison, where Plaintiff was housed at the time of the events at issue. Plaintiff names as defendants Correctional Officer Mike Morales, Sergeant Michael Alvarez and Lieutenant Lt. J. R. Garza.

Plaintiff alleges that on November 23, 2005, while he was working in the central kitchen at Kern Valley State Prison, searches were conducted. Plaintiff and the other inmate workers had already been searched by other officers when Defendants Morales and Alvarez, who were with

1 the Investigative Services Unit, arrived and set Plaintiff up by planting a weapon and falsifying
2 reports. Thereafter, Defendant Garza conducted Plaintiff's administrative segregation (AdSeg)
3 placement review and subsequent disciplinary hearing. Plaintiff alleges that he did not receive a
4 fair hearing, and that Defendant Garza did not consider all of the evidence, including Plaintiff's
5 full investigative employee report. Plaintiff alleges that as a result of the planted weapon,
6 falsified reports, and unfair hearing, he was housed in AdSeg, lost his job, lost his medium
7 security classification, and had his parole date extended from 2007 to 2011, in violation of his
8 right to substantive due process.

9 On February 4, 2009, findings and recommendations were entered, recommending that
10 this action proceed against Defendants Morales, Alvarez and Garcia for violation of Plaintiff's
11 right to due process, and that Plaintiff's equal protection claim be dismissed. On March 25,
12 2009, an order was entered by the District Court, adopting the finding and recommendation in
13 full. Service was ordered, and on September 23, 2009, Defendants Alvarez and Garza filed an
14 answer.¹

15 **II. Plaintiff's Motion**

16 **A. Plaintiff's Burden**

17 “[A] party seeking summary judgment always bears the initial responsibility of informing
18 the court of the basis for its motion, and identifying those portions of [the record] which it
19 believes demonstrates the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett,
20 477 U.S. 317, 323 (1986); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986).
21 Plaintiff's burden is to demonstrate affirmatively (by admissible evidence) that there is no
22 genuine issue of material fact as to each element of his claim for relief, entitling him to judgment
23 as a matter of law. Plaintiff must also demonstrate the lack of any genuine issue of material fact
24 as to affirmative defenses asserted by the defendant. But here, Plaintiff need not provide any

25
26 ¹ On August 7, 2009, the Marshal filed a return of service unexecuted as to Defendant Mike Morales. (ECF
27 No. 37.) On September 10, 2010, an order was entered, directing the Marshal to initiate re-service upon Defendant
Morales. The deadline for return of service is March 11, 2001.

1 evidence. He may simply point out the absence of evidence from the defendant. Fontenot v.
2 Upjohn Co., 780 F.2d 1190, 1195 (5th Cir. 1986); Zands v. Nelson, 797 F.Supp. 805, 808 (S. D.
3 Sal. 1992); Grimmway Enterprises, Inc. v. PIC Fresh Text, 548 S.Supp.2d 840, 845 (E. D. Cal.
4 2008).

5 **B. Due Process**

6 In the order determining that Plaintiff stated a claim for relief, the Court noted that
7 Plaintiff did not have a liberty interest in remaining free from AdSeg, in his prison job, in being
8 housed at a particular level of security, or in a particular classification level. Plaintiff's allegation
9 that his parole date was affected did, however, state a claim for relief that he was deprived of a
10 protected liberty interest created under state law. Sass v. California Board of Prison Terms, 461
11 F.3d 1123, 1128 (9th Cir. 2006).

12 "Prison disciplinary proceedings are not part of a criminal prosecution, and the full
13 panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell, 418
14 U.S. 539, 556 (1974). With respect to prison disciplinary proceedings, the minimum procedural
15 requirements that must be met are: (1) written notice of the charges; (2) at least 24 hours
16 between the time the prisoner receives written notice and the time of the hearing, so that the
17 prisoner may prepare his defense; (3) a written statement by the fact finders of the evidence they
18 rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call witnesses
19 and present documentary evidence in his defense, when permitting him to do so would not be
20 unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to the
21 prisoner where the prisoner is illiterate or the issues presented are legally complex. Id. at 563-71.
22 Confrontation and cross examination are not generally required. Id. at 567. As long as the five
23 minimum Wolff requirements are met, due process has been satisfied. Walker v. Sumner, 14
24 F.3d 1415, 1420 (9th Cir. 1994).

25 "[T]he requirements of due process are satisfied if some evidence supports the decision
26 by the prison disciplinary board" Hill, 472 U.S. at 455; *see also* Touissaint v. McCarthy,

1 926 F.2d 800, 802-03 (9th Cir. 1991); Bostic v. Carlson, 884 F.2d 1267, 1269-70 (9th Cir. 1989);
2 Jancsek, III v. Oregon Bd. of Parole, 833 F.2d 1389, 1390 (9th Cir. 1987); Cato v. Rushen, 824
3 F.2d 703, 705 (9th Cir. 1987); *see especially* Burnsworth v. Gunderson, 179 F.3d 771, 774-74
4 (9th Cir. 1999) (where there is no evidence of guilt may be unnecessary to demonstrate existence
5 of liberty interest.) The relevant inquiry is whether “there is *any* evidence in the record that
6 could support the conclusion reached . . . ” as “[t]he Federal Constitution does not require
7 evidence that logically precludes any conclusion but the one reached by the disciplinary board.”
8 Hill at 455-57 (emphasis added).

9 **C. Plaintiff’s Evidence**

10 In order to prevail, Plaintiff must come forward with evidence that establishes the lack of
11 a triable issue of material fact. Plaintiff must come forward with undisputed evidence that he
12 was deprived of due process at his disciplinary hearing. Although Plaintiff supports his motion
13 with references to his deposition transcript, he does not provide a copy of the transcript, or the
14 portions of the transcript to which he is referring. Local Rule 133(j) requires a party relying on
15 the deposition to ensure that a copy is provided to the Court. Plaintiff has not done so here. The
16 Court therefore cannot determine whether the deposition testimony relied upon by Plaintiff
17 establishes the existence of a triable issue of fact.

18 Plaintiff refers to his Exhibit B to support his statement of fact that “Defendants set up
19 prisoners, then attempt to turn prisoners into their informants.” Plaintiff’s Exhibit B is a copy of
20 CDC Form 114-D, Administrative Segregation Placement Notice, endorsed by Defendants
21 Morales and Alvarez, indicating that Plaintiff was placed in Administrative Segregation for
22 possession of a weapon. There is nothing in Exhibit B that establishes the lack of a triable issue
23 of fact regarding any attempt to “set up prisoners.”

24 Plaintiff refers to his Exhibit C to support his statement of fact that Defendant Garza, the
25 hearing officer, refused to address the investigative employee’s report. Defendants correctly note
26 that Exhibit C establishes that Defendant Garza did consider the investigative employee’s report.

1 Exhibit C is a copy of the CDC Form 115-A, Serious Rules Violation Report, regarding the
2 conduct at issue. Exhibit C includes the following statement from the investigative employee:

3 On January 4, 2006, at approximately 1300 hours, I contacted and
4 interviewed inmate COOPER, CDC# E-56897, Housing # ASU-2-
5 102L. I informed subject that I had been assigned as his
6 INVESTIGATIVE EMPLOYEE. I asked inmate Cooper if he had
7 any objections my assignment? Subject stated "NO" and we
8 proceed with the interview. I read the charges to inmate Cooper
9 and asked if he understood the charges? Subject stated "NO." I
10 asked inmate Cooper if he would like to make a statement in
11 regards to the charges? Subject stated "YES."

12 Exhibit C clearly creates a triable issue of fact as to whether the investigative employee's
13 statement was entered into the record and considered.

14 Plaintiff also contends that Defendant Garza refused to allow Plaintiff to offer any
15 documents in his defense. Plaintiff refers the Court to his Exhibits A-2, B and C. A review of
16 Plaintiff's Exhibit A-2, a copy of CDC Form 128G, classification chrono, reveals no support for
17 Plaintiff's contention that he was deprived of the opportunity to present documentary evidence.
18 A review of Plaintiff's Exhibit B, referred to above, does not establish any support for Plaintiff's
19 contention. Exhibit C indicates that the hearing officer asked Plaintiff if he would like to call any
20 witnesses on his behalf. Plaintiff indicated that he did not.

21 The Court finds that Plaintiff has not met his burden on summary judgment. Plaintiff has
22 not come forward with evidence that establishes the lack of a triable issue of fact. Plaintiff fails
23 to come forward with evidence establishing, without dispute, that he was denied due process at
24 his disciplinary hearing. Rather, as Defendants note, Plaintiff's exhibits indicate that, contrary to
25 his arguments, he was offered the opportunity to call witnesses, he was provided with an
26 investigative employee, the statement of the investigative employee was entered into the record,
27 and Plaintiff's own statement was entered into the record. Because Plaintiff has failed to meet
28 his burden on summary judgment, the motion should therefore be denied.

 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's motion for summary
judgment be denied.

