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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANGEL MORALES HERNANDEZ,
Petitioner,

1:08-cv-00254 LJO MJS HC

v.

FINDINGS AND RECOMMENDATION
REGARDING PETITION FOR WRIT OF
HABEAS CORPUS

DERRAL G. ADAMS,
Respondent.

_____ /
Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I. BACKGROUND

Petitioner is currently in the custody of the California Department of Corrections pursuant to a June 18, 2001, judgment of the Superior Court of California, County of Kern, (Am. Pet., ECF No. 7.) Petitioner was sentenced to a determinate term of thirteen years in prison on conviction of performing lewd and lascivious acts on a child under age fourteen. (Id.)

On November 6, 2007, Petitioner filed a federal habeas petition which he later, on December 12, 2007, amended. Petitioner seeks relief based on the denial of work time credits under California Penal Code section 2933's allowance for day to day credit for

1 employment in prison. On July 19, 2010, Respondent filed an answer to the petition.
2 (Answer, ECF No. 62.) Petitioner did not file a traverse.

3 **II. STATEMENT OF FACTS¹**

4 On August 3, 2002, Petitioner was given a culinary prison work assignment.
5 Petitioner worked full time in the position from August 3, 2002 until February 28, 2006.
6 (Supp. to Am. Pet. at 3-4, ECF No. 8.) Petitioner asserted that he was entitled to work time
7 credits for his employment under California Penal Code 2933, and he filed an
8 administrative remedy appeal on March 15, 2006 regarding the credits. (Id.) On March 21,
9 2006, a correctional counselor responded to the appeal, stating that any qualifying credits
10 were credited to his release date, even though no credits were provided for Petitioner's
11 time spent working.

12 On April 4, 2006, Petitioner filed another administrative appeal. On April 12, 2006,
13 a correctional counselor responded to the appeal again stating that his release date
14 reflected all of the credits to which he was entitled. Further, the response stated, "This
15 screening action may not be appealed - do not write anymore on this appeal itself. You
16 don't get ½ time." (Id.; Ex.1, ECF No. 8-1.)

17 Petitioner filed several petitions for writs of habeas corpus in the California state
18 courts. In his answer, Respondent asserts that the Petition should be denied based on: (1)
19 Petitioner's failure to exhaust state remedies, (2) procedural default (3) Petitioner's failure
20 to file within the one year statute of limitations, and (4) Petitioner's failure to state a
21 cognizable federal claim.

22 **III. DISCUSSION**

23 **A. Jurisdiction**

24 Relief by way of a petition for writ of habeas corpus extends to a person in custody
25 pursuant to a judgment of a state court if the custody is in violation of the Constitution or
26 laws or treaties of the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams
27

28 ¹The following facts are based on the assertions of Petitioner as stated in his amended petition.

1 v. Taylor, 529 U.S. 362, 375 n. 7, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). Petitioner
2 asserts that he suffered violations of his rights as guaranteed by the U.S. Constitution.
3 Petitioner's claims for relief arise from administrative appeal decisions at Corcoran State
4 Prison, California, which is located within the jurisdiction of this Court. 28 U.S.C. §§
5 2254(a), 2241(d). If a constitutional violation has resulted in the loss of time credits, such
6 violation affects the duration of a sentence, and the violation may be remedied by way of
7 a petition for writ of habeas corpus. Young v. Kenny, 907 F.2d 874, 876-78 (9th Cir. 1990).
8 In this case, Petitioner alleges a loss of good time credits. Therefore, the Court has
9 jurisdiction.

10 **B. Standard of Review**

11 _____ The instant petition is reviewed under the provisions of the Antiterrorism and
12 Effective Death Penalty Act ("AEDPA") which became effective on April 24, 1996. Lockyer
13 v. Andrade, 538 U.S. 63, 70, 123 S. Ct. 1166, 155 L. Ed. 2d 144 (2003). Under the
14 AEDPA, a petitioner can prevail only if he can show that the state court's adjudication of
15 his claim:

16 (1) resulted in a decision that was contrary to, or involved an unreasonable
17 application of, clearly established Federal law, as determined by the
Supreme Court of the United States; or

18 (2) resulted in a decision that was based on an unreasonable determination
19 of the facts in light of the evidence presented in the State court proceeding.

20 28 U.S.C. § 2254(d); Lockyer, 538 U.S. at 70-71; Williams, 529 U.S. at 413.

21 As a threshold matter, this Court must "first decide what constitutes 'clearly
22 established Federal law, as determined by the Supreme Court of the United States.'"
23 Lockyer, 538 U.S. at 71, *quoting* 28 U.S.C. § 2254(d)(1). In ascertaining what is "clearly
24 established Federal law," this Court must look to the "holdings, as opposed to the dicta,
25 of [the Supreme Court's] decisions as of the time of the relevant state-court decision." Id.,
26 *quoting Williams*, 592 U.S. at 412. "In other words, 'clearly established Federal law' under
27 § 2254(d)(1) is the governing legal principle or principles set forth by the Supreme Court
28 at the time the state court renders its decision." Id.

1 Finally, this Court must consider whether the state court's decision was "contrary to,
2 or involved an unreasonable application of, clearly established Federal law." Lockyer, 538
3 U.S. at 72, *quoting* 28 U.S.C. § 2254(d)(1). "Under the 'contrary to' clause, a federal
4 habeas court may grant the writ if the state court arrives at a conclusion opposite to that
5 reached by [the Supreme] Court on a question of law or if the state court decides a case
6 differently than [the] Court has on a set of materially indistinguishable facts." Williams, 529
7 U.S. at 413; *see also* Lockyer, 538 U.S. at 72. "Under the 'reasonable application clause,'
8 a federal habeas court may grant the writ if the state court identifies the correct governing
9 legal principle from [the] Court's decisions but unreasonably applies that principle to the
10 facts of the prisoner's case." Williams, 529 U.S. at 413.

11 "[A] federal court may not issue the writ simply because the court concludes in its
12 independent judgment that the relevant state court decision applied clearly established
13 federal law erroneously or incorrectly. Rather, that application must also be unreasonable."
14 Id. at 411. A federal habeas court making the "unreasonable application" inquiry should
15 ask whether the state court's application of clearly established federal law was "objectively
16 unreasonable." Id. at 409.

17 Petitioner has the burden of establishing that the decision of the state court is
18 contrary to or involved an unreasonable application of United States Supreme Court
19 precedent. Baylor v. Estelle, 94 F.3d 1321, 1325 (9th Cir. 1996). Although only Supreme
20 Court law is binding on the states, Ninth Circuit precedent remains relevant persuasive
21 authority in determining whether a state court decision is objectively unreasonable. See
22 Duhaime v. Ducharme, 200 F.3d 597, 600-01 (9th Cir.1999).

23 AEDPA requires that we give considerable deference to state court decisions.
24 "Factual determinations by state courts are presumed correct absent clear and convincing
25 evidence to the contrary, § 2254(e)(1), and a decision adjudicated on the merits in a state
26 court and based on a factual determination will not be overturned on factual grounds
27 unless objectively unreasonable in light of the evidence presented in the state court
28 proceeding, § 2254(d)(2)." Miller-El v. Cockrell, 537 U.S. 322, 340 (2003). Both

1 subsections (d)(2) and (e)(1) of § 2254 apply to findings of historical or pure fact, not mixed
2 questions of fact and law. See Lambert v. Blodgett, 393 F.3d 943, 976-77 (2004).

3 **III. ANALYSIS OF CLAIMS**

4 **A. Good Time Credits**

5 Petitioner contends that he has been denied good time credits provided California
6 inmates under California Penal Code section 2933.

7 This Court must look to the last reasoned state court decision, the Monterrey County
8 Superior Court's denial of Petitioner's state habeas petition on May 14, 2007. Ylst, 501 U.S.
9 at 801-06. That court, in pertinent part, held:

10 In the instant petition, Petitioner claims that the California Department
11 of Corrections and Rehabilitation is improperly denying him half-time credits.

12 Petitioner's claim is without merit.

13 Penal Code section 2933.1(a) reads as follows: "Notwithstanding any
14 other law, any person who is convicted of a felony offense listed in Section
15 667.5 shall accrue no more than 15 percent of worktime credit, as defined
16 in Section 2933."

17 Here, Petitioner states that he was convicted of a violation of Penal
18 Code section 288(a) (a lewd or lascivious act on a child under the age of 14).
19 (See Petition, p.1.) An offense of a lewd or lascivious act on a child under the
20 age of 14 is a felony offense listed in Section 667.5. Thus, Petitioner is
21 ineligible for half-time credits, and the 15 percent limitation in section
22 2933.1(a) is applicable to him.

23 To the extent Petitioner claims that his right to equal protection is
24 being violated, his claim fails. Petitioner fails to show how he is similarly
25 situated with other prisoners who are not convicted of felony offenses listed
26 in Section 667.5.

27 The petition is denied. (Answer, Ex. 8, ECF No. 63-1.)

28 California has not created a protected liberty interest in earning credits for work. See
California Penal Code § 2933(c) ("Credit is a privilege, not a right"); Kalka v. Vasquez, 867
F.2d 546, 547 (9th Cir. 1989) ("section 2933 does not create a constitutionally protected
liberty interest"). Because Petitioner has no constitutionally protected liberty interest in
earning work time credit, an allegation that he is being deprived of the opportunity to earn
such credit cannot form a basis for habeas corpus relief.

In order to state a due process claim, Petitioner must show that a constitutionally

1 protected liberty interest is implicated. Baumann v. Arizona Dept. of Corrections, 754 F.2d
2 841, 844 (9th Cir. 1985). A state may create a constitutionally protected liberty interest if
3 it establishes regulatory measures that impose substantive limitations on the exercise of
4 official discretion. Hewitt v. Helms, 459 U.S. 460, 470-72, 103 S. Ct. 864, 74 L. Ed. 2d 675
5 (1983), overruled in part by Sandin v. Conner, 515 U.S. 472, 484, 115 S. Ct. 2293, 132 L.
6 Ed. 2d 418 (1995).

7 However, a state prisoner does not have a liberty interest in a classification status
8 under the Fourteenth Amendment. Hernandez v. Johnston, 833 F.2d 1316,1318 (9th Cir.
9 1987); see Moody v. Daggett, 429 U.S. 78, 88 n.9, 97 S. Ct. 274, 50 L. Ed. 2d 236 (1976)
10 (Due Process Clause not implicated by federal prisoner classification and eligibility for
11 rehabilitative programs, even where inmate suffers "grievous loss").

12 Petitioner simply has no constitutional right to a particular classification or to earn
13 credits. Because Petitioner has not shown a violation of the Federal Constitution, petitioner
14 is not entitled to habeas corpus relief. See 28 U.S.C. § 2254 (habeas corpus available for
15 violations of the Constitution or federal law.) Therefore the state court's denial of
16 Petitioner's due process claim was neither contrary to, nor an unreasonable application of,
17 clearly established law. See 28 U.S.C. § 2254(d); Williams, 529 U.S. at 412-13.

18 **III. OTHER ASSERTED GROUNDS FOR DENYING PETITION**

19 Respondent also asserts that the petition should be denied based on failure to
20 exhaust state judicial remedies, procedural default, the statute of limitations. As the Court
21 has determined that Petitioner is not entitled to relief on the merits of the petition, the Court
22 need not address the other grounds for dismissal raised by Respondent. An application
23 may be denied on the merits, notwithstanding the failure of the applicant to exhaust the
24 remedies available in the courts of the State. 28 U.S.C. § 2254(b)(2).

25 **IV. RECOMMENDATION**

26 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 27 1. The instant petition for writ of habeas corpus be DENIED; and
- 28 2. The Clerk of Court be DIRECTED to enter judgment in favor of Respondent.

1 This Findings and Recommendation is submitted to the assigned United States
2 District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule
3 304 of the Local Rules of Practice for the United States District Court, Eastern District of
4 California. Within thirty (30) days after being served with a copy, any party may file written
5 objections with the court and serve a copy on all parties. Such a document should be
6 captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to
7 the objections shall be served and filed within fourteen (14) days after service of the
8 objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C.
9 § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified
10 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
11 1153 (9th Cir. 1991).

12
13 IT IS SO ORDERED.

14 Dated: December 6, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE