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6 **UNITED STATES DISTRICT COURT**
78 EASTERN DISTRICT OF CALIFORNIA
910 DAVID BERRY, 1:08-cv-01973-OWW-DLB HC
11 v. Petitioner,
12 L. WATSON, Warden FINDINGS AND RECOMMENDATION
13 Respondent. REGARDING PETITION FOR WRIT OF
14 _____ / HABEAS CORPUS
15

[Doc. 1]

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

Petitioner filed the instant petition for writ of habeas corpus on September 30, 2008, in the United States District Court for the Northern District of California. On December 18, 2008, the petition was transferred to this Court, and filed on December 29, 2008. (Court Docs. 3, 4.)

Petitioner is challenging a rules violation report for failure to respond to a prior ducat claiming there was not “some evidence” to support the guilty finding. Petitioner was found guilty of a lesser included offense—an administrative violation and was reprimanded and counseled.

Prisoners cannot be entirely deprived of their constitutional rights, but their rights may be diminished by the needs and objectives of the institutional environment. Wolff v. McDonnell, 418 U.S. 539, 555 (1974). Prison disciplinary proceedings are not part of a criminal prosecution, so a prisoner is not afforded the full panoply of rights in such proceedings. Id. at 556. Thus, a

prisoner's due process rights are moderated by the "legitimate institutional needs" of a prison. Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989), *citing* Superintendent, etc. v. Hill, 472 U.S. 445, 454-455 (1984).

However, when a prison disciplinary proceeding may result in the *loss of good time credits*, due process requires that the prisoner receive: (1) advance written notice of at least 24 hours of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action. Hill, 472 U.S. at 454; Wolff, 418 U.S. at 563-567. In addition, due process requires that the decision be supported by “some evidence.” Hill, 472 U.S. at 455, *citing* United States ex rel. Vatauer v. Commissioner of Immigration, 273 U.S. 103, 106 (1927). The “some evidence” standard is “minimally stringent,” and a decision must be upheld if there is any reliable evidence in the record that could support the conclusion reached by the fact finder. Hill, 472 U.S. at 455-456; see also Barnsworth v. Gunderson, 179 F.3d 771, 779 (9th Cir. 1990); Zimmerlee v. Keeney, 831 F.2d 183, 186 (9th Cir. 1987). Determining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or the weighing of evidence. Hill, 472 U.S. at 455; Toussaint v. McCarthy, 801 F.2d 1080, 1105 (9th Cir. 1986).

In this instance, it is clear that Petitioner was not deprived of any loss of custody credits. Therefore, his claim is not cognizable via section 2254 and must be dismissed.

RECOMMENDATION

Based on the foregoing, it is HEREBY RECOMMENDED that:

1. The instant petition for writ of habeas corpus be DISMISSED; and
2. The Clerk of Court be directed to terminate this action in its entirety.

This Findings and Recommendation is submitted to the assigned United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within thirty (30) days after being served with a copy, any party may file written objections with

1 the court and serve a copy on all parties. Such a document should be captioned "Objections to
2 Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served
3 and filed within ten (10) court days (plus three days if served by mail) after service of the
4 objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
5 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time
6 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
7 Cir. 1991).

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9 IT IS SO ORDERED.

10 Dated: January 12, 2009

11 /s/ **Dennis L. Beck**
12 UNITED STATES MAGISTRATE JUDGE

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