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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CARLOS MONTES,

1:09-cv-01214-AWI-SMS (HC)

Petitioner,

ORDER ADOPTING FINDINGS AND
RECOMMENDATION AND REFERRING
MATTER BACK TO MAGISTRATE JUDGE
FOR FURTHER PROCEEDINGS

v.

DERRAL G. ADAMS, Warden

[Doc. 15]

Respondent.

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

On February 18, 2010, the Magistrate Judge issued Findings and Recommendation that the Motion to Dismiss be GRANTED, but Petitioner be given leave to file an amended petition. This Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order.

On March 26, 2010, Petitioner filed timely objections to the Findings and Recommendation. Pursuant to Court order, Respondent filed supplemental objections on May 21, 2010. Petitioner filed a supplemental reply on June 18, 2010.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Respondent's objections, the Court concludes that the Magistrate Judge's Findings and Recommendation is supported by the record and proper analysis.

1 In his objections, Respondent contends that the instant petition is moot because any future
2 challenge to his ability to earn good time credits is moot because he has completed his minimum
3 term of imprisonment and was denied parole at his initial parole hearing on September 5, 2008.
4 The Court does not find merit to Respondent's argument. Petitioner challenges an administrative
5 decision to retain him in the Security Housing Unit (SHU) which took place on December 8,
6 2005-almost three years prior to the completion of his minimum term of imprisonment. Thus,
7 the Court cannot determine, at this juncture, that the instant petition is moot because it challenges
8 actions which took place prior to the action which Respondent claims rendered the instant moot.
9 As Petitioner argues in his reply, the effect of Petitioner's retention in the SHU and inability to
10 earn good-time credits may have resulted in an earlier minimum eligibility release date.
11 Therefore, Respondent's objections present no grounds for questioning the Magistrate Judge's
12 analysis, and Petitioner should be given the opportunity to amend his petition to clarify his
13 claim(s) for relief.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Findings and Recommendation issued February 18, 2010 , is ADOPTED IN
16 FULL;
- 17 2. Respondent's Motion to Dismiss is GRANTED, but Petitioner is GRANTED
18 leave to file an amended petition within thirty (30) days from the date of service
19 of this order; and
- 20 3. The matter is referred back to the Magistrate Judge for further proceedings.

21
22 IT IS SO ORDERED.

23 Dated: September 27, 2010

24 
25 CHIEF UNITED STATES DISTRICT JUDGE
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