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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL HUERTA,)	1:09-cv-01366 OWW JMD (HC)
)	
Petitioner,)	
)	FINDINGS AND RECOMMENDATIONS
v.)	REGARDING PETITION FOR WRIT OF
)	HABEAS CORPUS
JAMES HARTLEY,)	
)	OBJECTIONS DUE WITHIN THIRTY (30)
Respondent.)	DAYS

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

PROCEDURAL BACKGROUND

Petitioner is in the custody of the California Department of Corrections and Rehabilitation pursuant to a conviction for first-degree murder. He is currently housed at Avenal State Prison in Avenal, California.

Petitioner does not challenge his underlying conviction and sentence. Rather, he challenges a prison disciplinary proceeding during which he was found guilty of possessing dangerous contraband in violation of California Code of Regulations, Title 15, Section 3006. Petitioner was found guilty of the offense on February 18, 2008.

Petitioner filed a petition for writ of habeas corpus with the Kings County Superior Court. The court denied the petition in a reasoned decision on January 30, 2009. (See Pet. Ex. D, Super. Ct. Decision, Jan. 30, 2009, ECF No. 1.)

1 Petitioner filed subsequent petitions for writ of habeas corpus with the California Court of
2 Appeal and the California Supreme Court. Both courts issued summary denials.

3 Petitioner filed the instant petition for writ of habeas corpus on August 5, 2009. Respondent
4 filed an answer on January 15, 2010, and Petitioner filed a traverse on February 5, 2010.

5 **FACTUAL BACKGROUND**

6 On February 14, 2008, while performing an unclothed body and clothing search, an Avenal
7 employee (“reporting employee”) discovered a razor blade in Petitioner’s boot. (Pet. Ex. A,
8 Director’s Level Appeal Decision (“Director’s Decision”).)

9 The reporting employee reported the contraband and Petitioner was served with a rules
10 violation report (“RVR”) on February 17, 2008, at 9:30 a.m. (Pet. Ex. B, RVR, Feb. 14, 2008.) A
11 disciplinary hearing was conducted on February 18, 2008, at 10:00 a.m. (Pet. Ex. F, RVR - Part C,
12 Feb. 18, 2008.) At the hearing, the reporting employee’s written report and a photo copy of the razor
13 blade were presented as evidence against Petitioner. (Director’s Decision.) The Senior Hearings
14 Officer (“SHO”) found Petitioner guilty of possession of dangerous contraband and assessed
15 Petitioner a 120 day loss of good time credit.

16 Petitioner filed a Second Level appeal, which was denied. (Director’s Decision.)

17 Petitioner filed a Director’s Level appeal, which was denied on August 29, 2008. The
18 Director’s Level decision found that (1) all due process procedural guidelines were met at the
19 disciplinary hearing; (2) the SHO’s guilty finding was supported by a preponderance of the evidence;
20 (3) that the SHO was impartial and ; (4) that Petitioner presented no new or compelling evidence on
21 appeal. Id.

22 **DISCUSSION**

23 **I. Jurisdiction**

24 Where a constitutional violation has resulted in the loss of time credits, such a violation
25 affects the duration of a sentence and the violation may be remedied by way of a petition for writ of
26 habeas corpus. Young v. Kenny, 907 F.2d 874, 876-78 (9th Cir. 1990).

27 Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant
28 to the judgment of a state court if the custody is in violation of the Constitution or laws or treaties of

1 the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 529 U.S. 362,
2 375 n.7 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by the U.S.
3 Constitution. In addition, Petitioner is currently housed in a State facility in Avenal, California,
4 which is located within the jurisdiction of this court. 28 U.S.C. § 84(b) (placing Kings County in the
5 jurisdiction of the Eastern District of California); 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(d) (vesting
6 concurrent jurisdiction in the district court of the judicial district wherein the petitioner is in custody
7 and wherein the alleged deprivation took place). Accordingly, the Court has jurisdiction over the
8 action.

9 **II. Legal Standard of Review**

10 The instant petition is reviewed under the provisions of Anti-Terrorism and Effective Death
11 Penalty Act (AEDPA). Lockyer v. Andrade, 538 U.S. 63, 70 (2003). Under the AEDPA, an
12 application for habeas corpus will not be granted unless the adjudication of the claim “resulted in a
13 decision that was contrary to, or involved an unreasonable application of, clearly established Federal
14 law, as determined by the Supreme Court of the United States” or “resulted in a decision that was
15 based on an unreasonable determination of the facts in light of the evidence presented in the State
16 Court proceeding.” 28 U.S.C. § 2254(d); see Lockyer, 538 U.S. at 70-71; see Williams, 529 U.S. at
17 413.

18 As a threshold matter, this Court must "first decide what constitutes 'clearly established
19 Federal law, as determined by the Supreme Court of the United States.'" Lockyer, 538 U.S. 63, 71
20 (2003) (quoting 28 U.S.C. § 2254(d)(1)). In ascertaining what is "clearly established Federal law,"
21 this Court must look to the "holdings, as opposed to the dicta, of [the Supreme Court's] decisions as
22 of the time of the relevant state-court decision." Id. (quoting Williams, 529 U.S. at 412. "In other
23 words, 'clearly established Federal law' under § 2254(d)(1) is the governing legal principle or
24 principles set forth by the Supreme Court at the time the state court renders its decision." Id.

25 Finally, this Court must consider whether the state court's decision was "contrary to, or
26 involved an unreasonable application of, clearly established Federal law." Lockyer, 538 U.S. at 72,
27 (quoting 28 U.S.C. § 2254(d)(1)). “Under the ‘contrary to’ clause, a federal habeas court may grant
28 the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a

1 question of law or if the state court decides a case differently than [the Supreme] Court has on a set
2 of materially indistinguishable facts.” Williams, 529 U.S. at 413; see also Lockyer, 538 U.S. at 72.
3 “Under the ‘reasonable application clause,’ a federal habeas court may grant the writ if the state
4 court identifies the correct governing legal principle from [the Supreme] Court’s decisions but
5 unreasonably applies that principle to the facts of the prisoner’s case.” Williams, 529 U.S. at 413.

6 “[A] federal court may not issue the writ simply because the court concludes in its
7 independent judgment that the relevant state court decision applied clearly established federal law
8 erroneously or incorrectly. Rather, that application must also be unreasonable.” Id. at 411. When
9 making an “unreasonable application” inquiry, a federal habeas court should ask whether the state
10 court’s application of clearly established federal law was “objectively unreasonable.” Id. at 409.

11 Petitioner has the burden of establishing that the decision of the state court is contrary to or
12 involved an unreasonable application of United States Supreme Court precedent. Baylor v. Estelle,
13 94 F.3d 1321, 1325 (9th Cir. 1996). Although only Supreme Court law is binding on the states,
14 Ninth Circuit precedent remains relevant persuasive authority in determining whether a state court
15 decision is objectively unreasonable. See Duhaime v. Ducharme, 200 F.3d 597, 600-01 (9th Cir.
16 1999).

17 AEDPA requires that we give considerable deference to state court decisions. The state
18 court's factual findings are presumed correct, 28 U.S.C. § 2254(e)(1), and we are bound by a state's
19 interpretation of its own laws. Souch v. Schaivo, 289 F.3d 616, 621 (9th Cir. 2002), *cert. denied*,
20 537 U.S. 859 (2002), *rehearing denied*, 537 U.S. 1149 (2003).

21 Thus, the initial step in applying AEDPA’s standards is to “identify the state court decision
22 that is appropriate for our review.” Barker v. Fleming, 423 F.3d 1085, 1091 (9th Cir. 2005). Where
23 more than one State court has adjudicated Petitioner’s claims, a federal habeas court analyzes the last
24 reasoned decision. Id. (citing Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991) for the presumption
25 that later unexplained orders, upholding a judgment or rejecting the same claim, rests upon the same
26 ground as the prior order). The Ninth Circuit has further stated that, where it is undisputed that
27 federal review is not barred by a state procedural ruling, “the question of which state court decision
28 last ‘explained’ the reasons for judgment is therefore relevant only for purposes of determining

1 whether the state court decision was ‘contrary to’ or an ‘unreasonable application of’ clearly
2 established federal law.” Bailey v. Rae, 339 F.3d 1107, 1112-1113 (9th Cir. 2003). Thus, a federal
3 habeas court looks through ambiguous or unexplained State court decisions to the last reasoned
4 decision in order to determine whether that decision was contrary to or an unreasonable application
5 of clearly established federal law. Id.

6 Here, the Kings County Superior Court, the California Court of Appeal, and the California
7 Supreme Court all adjudicated Petitioner’s claims. The California Court of Appeal and the
8 California Supreme Court issued summary denials of Petitioner’s claims. Therefore, the Court
9 “look[s] through” those decisions to the last reasoned decision; in this case, that of the Kings County
10 Superior Court. See Ylst v. Nunnemaker, 501 U.S. at 804.

11 **III. Review of Petitioner’s Claims**

12 Petitioner claims that the prison disciplinary action taken against him violated his due process
13 rights because (1) the disciplinary hearing was not held more than twenty-four hours after he
14 received a copy of the RVR; and (2) because the evidence presented against him—a photo copy of a
15 razor blade—was insufficient to find him guilty.

16 Prisoners cannot be entirely deprived of their constitutional rights but their rights may be
17 diminished by the needs and objectives of the institutional environment. Wolff v. McDonnell, 418
18 U.S. 539, 555 (1974). Prison disciplinary proceedings are not part of a criminal prosecution, so a
19 prisoner is not afforded the full panoply of rights in such proceedings. Id. at 556. Thus, a prisoner’s
20 due process rights are moderated by the “legitimate institutional needs” of a prison. Bostic v.
21 Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989), (citing Superintendent, etc. v. Hill, 472 U.S. 445, 454-
22 455 (1984)).

23 When a prison disciplinary proceeding may result in the loss of good time credits, due
24 process requires that the prisoner receive: (1) advance written notice of at least twenty-four hours of
25 the disciplinary charges; (2) an opportunity, when consistent with institutional safety and
26 correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a
27 written statement by the fact finder of the evidence relied on and the reasons for the disciplinary
28 action. Hill, 472 U.S. at 454; Wolff, 418 U.S. at 563-567. In addition, due process requires that the

1 decision be supported by “some evidence.” Hill, 472 U.S. at 455 (citing U.S. ex rel. Vatauer v.
2 Commissioner of Immigration, 273 U.S. 103, 106 (1927)).

3 The superior court found that Petitioner’s procedural due process rights were not violated by
4 the time period between Petitioner’s receipt of the RVR and the disciplinary hearing. The record
5 reflects that Petitioner received a copy of the RVR at 9:30 a.m. on February 17, 2008, and the
6 disciplinary hearing was not held until 10:00 a.m. on February 18, 2008. The disciplinary hearing
7 was held more than twenty-four hours after Petitioner received a copy of the RVR, thereby
8 comporting with procedural due process requirements. The Court finds that the superior court’s
9 decision was not an unreasonable application of federal law.

10 Additionally, the superior court found “some evidence” to support the SHO’s guilty finding.
11 The court agreed with Petitioner that the copy of the razor blade was “not as clear as it could be,” but
12 went on to hold that “the Reporting Employee’s consistent description of the razor as ‘a single edge
13 razor blade’ provides adequate foundation for the Senior Hearing Officer’s consideration of the
14 photograph as evidence tending to support a finding of Petitioner’s guilt.” (Pet., Superior Ct.
15 Decision, 2, Jan. 30, 2009.) The Court agrees that the reporting employee’s first-hand account
16 constitutes “some evidence” of Petitioner’s guilt. Thus, the superior court’s finding was not an
17 unreasonable application of federal law.

18 In sum, the disciplinary hearing satisfied all due process requirements. Petitioner should not
19 be granted habeas relief with regards to this claim and his petition should be denied.

20 **RECOMMENDATION**

21 Accordingly, IT IS HEREBY RECOMMENDED that the petition for a writ of habeas corpus
22 be DENIED. It is FURTHER RECOMMENDED that the Clerk of Court be DIRECTED to enter
23 judgment.

24 This Findings and Recommendations is submitted to the Honorable Oliver W. Wanger,
25 United States District Court Judge, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
26 thirty days after being served with the Findings and Recommendations, any party may file written
27 objections with the Court and serve a copy on all parties. Such a document should be captioned
28 "Objections to Magistrate Judge's Findings and Recommendation." Any reply to the objections shall

1 be served and filed within ten days after service of the objections. The parties are advised that
2 failure to file objections within the specified time may waive the right to appeal the District Court's
3 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: September 7, 2010 /s/ John M. Dixon
UNITED STATES MAGISTRATE JUDGE