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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JUAN JOSE RAMIREZ,	)	1:10-CV-00647 LJO GSA HC
	)	
Petitioner,	)	
	)	FINDINGS AND RECOMMENDATION
v.	)	REGARDING PETITION FOR WRIT OF
	)	HABEAS CORPUS
	)	
M. K. WITCHERS,	)	
	)	
Respondent.	)	
_____)		

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

**BACKGROUND<sup>1</sup>**

Petitioner is currently in the custody of the California Department of Corrections pursuant to a judgment of the Superior Court of California, County of Orange, following his conviction in 1996, of second degree murder. (See Resp't's Answer Ex. 1.) He was sentenced to serve an indeterminate term of nineteen years to life with the possibility of parole. (Id.)

Petitioner filed the instant petition on April 14, 2010. Petitioner does not challenge his underlying conviction and sentence. Rather, he challenges a prison disciplinary hearing held on

<sup>1</sup>This information is derived from the petition for writ of habeas corpus and the documents attached to Respondent's answer to the petition.

1 December 17, 2007, in which he was found guilty of possessing contraband, to wit, a cell phone  
2 charger. Respondent filed an answer to the petition on July 9, 2010. Petitioner filed a traverse on  
3 August 4, 2010.

4 On November 17, 2007, Correctional Officer T. Davies conducted a search of a locker  
5 assigned to Petitioner. During the search, Officer Davies discovered a cell phone charger wrapped  
6 up in a blanket and stuffed inside a pillow case. The pillow was arranged neatly on top of the rolled  
7 up mattress. The cell phone charger was black, approximately twenty-four inches long, and had two  
8 male type adapters that plugged into a power source and into a cell phone. Investigative Services  
9 Unit Officer R. Mathus arrived and photographed the charger and then took possession. On  
10 November 20, 2007, Officer Mathus verified the item was a cell phone charger.

11 On December 17, 2007, a disciplinary hearing was held with respect to the November 17,  
12 2007, violation. Petitioner acknowledged that he had received all documents to be used in the  
13 hearing. Petitioner had been assigned an investigative employee because he had been placed in  
14 administrative segregation. At the hearing, Petitioner requested the presence of the reporting  
15 employee, Officer Davies. Officer Davies presented for the hearing. Petitioner testified that the cell  
16 phone charger did not belong to him. He stated it was in his bed and not locked in his locker;  
17 therefore, anyone could have put the charger in his bed. Petitioner was found guilty as charged,  
18 based on the testimony of Officer Davies and the manner in which the item was concealed in  
19 Petitioner's bed. Petitioner was assessed a credit forfeiture of 120 days. Petitioner pursued his  
20 administrative appeals. At the Director's Level of Review, the charge was reduced from possession  
21 of dangerous contraband to possession of contraband, a violation of Cal. Code Regs., tit. 15,  
22 § 3006(c)(3). As a result, the credit forfeiture was reduced to 30 days.

23 On November 25, 2008, Petitioner filed a petition for writ of habeas corpus in the Kern  
24 County Superior Court. The petition was denied on January 22, 2009, in a reasoned decision. (See  
25 Resp't's Answer Ex. 2.) On March 12, 2009, Petitioner filed a petition for writ of habeas corpus in  
26 the California Court of Appeals, Fifth Appellate District. The petition was summarily denied on  
27 May 14, 2009. (See Resp't's Answer Ex. 3.) Petitioner next filed a petition for writ of habeas corpus  
28 in the California Supreme Court on August 6, 2009, and the petition was summarily denied on

1 March 10, 2010. (See Resp't's Answer Ex. 4.)

2 As noted above, Petitioner filed the instant federal habeas petition on April 14, 2010.  
3 Petitioner complains he was not allowed to defend himself because he was not presented with the  
4 actual cell phone charger at the onset of the hearing. He further claims the hearing officer should  
5 have relied on Investigative Services Unit Officer Mathus' determination of the item rather than the  
6 reporting officer. He also claims he was charged for conduct that was not proscribed by rule or  
7 regulation at the time.

## 8 DISCUSSION

### 9 I. Jurisdiction

10 Relief by way of a petition for writ of habeas corpus extends to a person in custody pursuant  
11 to a judgment of a state court if the custody is in violation of the Constitution or laws or treaties of  
12 the United States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 529 U.S. 362,  
13 375 (2000). Petitioner asserts that he suffered violations of his rights as guaranteed by the U.S.  
14 Constitution. Petitioner's claims for relief arise out of a disciplinary hearing at Corcoran State  
15 Prison, California, which is located within the jurisdiction of this Court. 28 U.S.C. §§ 2254(a),  
16 2241(d). If a constitutional violation has resulted in the loss of time credits, such violation affects the  
17 duration of a sentence, and the violation may be remedied by way of a petition for writ of habeas  
18 corpus. Young v. Kenny, 907 F.2d 874, 876-78 (9<sup>th</sup> Cir. 1990). In this case, Petitioner suffered a loss  
19 of thirty days of good time credits. Therefore, the Court has jurisdiction.

### 20 II. Standard of Review

21 This Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody  
22 pursuant to the judgment of a State court only on the ground that he is in custody in violation of the  
23 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

24 The AEDPA altered the standard of review that a federal habeas court must apply with  
25 respect to a state prisoner's claim that was adjudicated on the merits in state court. Williams v.  
26 Taylor, 529 U.S. 362 (2000). Under the AEDPA, an application for writ of habeas corpus will not be  
27 granted unless the adjudication of the claim "resulted in a decision that was contrary to, or involved  
28 an unreasonable application of, clearly established Federal law, as determined by the Supreme Court

1 of the United States;” or “resulted in a decision that was based on an unreasonable determination of  
2 the facts in light of the evidence presented in the State Court proceeding.” 28 U.S.C. § 2254(d);  
3 Lockyer v. Andrade, 123 S.Ct. 1166 (2003), *disapproving the Ninth Circuit’s approach in Van Tran*  
4 *v. Lindsey*, 212 F.3d 1143 (9<sup>th</sup> Cir. 2000); Williams, 529 U.S. 362. “A federal habeas court may not  
5 issue the writ simply because that court concludes in its independent judgment that the relevant state  
6 court decision applied clearly established federal law erroneously or incorrectly.” Lockyer, 123 S.Ct.  
7 at 1175 (citations omitted). “Rather, that application must be objectively unreasonable.” Id. (citations  
8 omitted).

9 The state court’s factual determinations must be presumed correct, and the federal court must  
10 accept all factual findings made by the state court unless the petitioner can rebut “the presumption of  
11 correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1); Purkett v. Elem, 514 U.S.  
12 765 (1995); Thompson v. Keohane, 516 U.S. 99 (1995); Langford v. Day, 110 F.3d 1380, 1388 (9<sup>th</sup>  
13 Cir. 1997).

### 14 III. Review of Petitioner’s Claims

15 Petitioner argues he was unconstitutionally found guilty of a serious rules violation report.  
16 The petition is without merit as it is clear all due process requirements were met.

17 Prisoners cannot be entirely deprived of their constitutional rights, but their rights may be  
18 diminished by the needs and objectives of the institutional environment. Wolff v. McDonnell, 418  
19 U.S. 539, 555 (1974). Prison disciplinary proceedings are not part of a criminal prosecution, so a  
20 prisoner is not afforded the full panoply of rights in such proceedings. Id. at 556. Thus, a prisoner’s  
21 due process rights are moderated by the “legitimate institutional needs” of a prison. Bostic v.  
22 Carlson, 884 F.2d 1267, 1269 (9<sup>th</sup> Cir. 1989), *citing Superintendent, etc. v. Hill*, 472 U.S. 445, 454-  
23 455 (1984).

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

1 at 454; Wolff, 418 U.S. at 563-567. In addition, due process requires that the decision be supported  
2 by “some evidence.” Hill, 472 U.S. at 455, *citing* United States ex rel. Vatauer v. Commissioner of  
3 Immigration, 273 U.S. 103, 106 (1927)

4 In this case, it is clear the minimum due process requirements were met. Petitioner was given  
5 twenty-four hours advance written notice of the hearing. He was given a copy of the CDC-115  
6 report on November 29, 2007, and the hearing was held on December 17, 2007. Petitioner was also  
7 given an opportunity to call witnesses and present evidence. Petitioner requested the reporting  
8 officer to appear and he did whereupon Petitioner questioned him. Petitioner was also given a copy  
9 of the written decision of the hearing officer on January 14, 2008. Therefore, the first three due  
10 process requirements were met.

11 Nevertheless, Petitioner claims the decision was not supported by some evidence, because the  
12 item in question was not a cell phone charger and it did not belong to him. He also complains that  
13 he was not presented with the actual item of contraband or a photograph thereof at the hearing.  
14 However, a photograph of the item had been taken and provided at the hearing, and Petitioner  
15 acknowledged receiving all documents to be used at the hearing. In addition, the hearing officer  
16 relied on the testimony of the reporting officer who confirmed the item was a cell phone charger.  
17 Additionally, Petitioner’s own statement at the hearing that the cell phone charger was not his and  
18 could have been placed there by anyone was deemed an admission of its existence. As to  
19 Petitioner’s contention the item was not his, the reporting officer found the item elaborately  
20 concealed in Petitioner’s bedding. From this, the superior court determined that there was at least  
21 some evidence supporting the hearing officer’s finding that the item belonged to Petitioner. The  
22 superior court correctly cited to and applied the Hill “some evidence” standard and determined there  
23 was some evidence to conclude the item was in fact a cell phone charger in Petitioner’s possession.  
24 The superior court’s determination was not an unreasonable application of the Hill standard. In  
25 addition, the superior court did not unreasonably determine the facts.

26 Petitioner also claims he was denied exculpatory evidence in the form of the actual cell  
27 phone charger that was confiscated. As discussed above, this reviewing court must determine  
28 whether the state court’s finding of some evidence was not unreasonable. Here, there was evidence

1 other than the actual charger that could be relied on by the hearing officer in his finding that  
2 Petitioner possessed a cell phone charger. This included the testimony and report of the reporting  
3 officer as well as Petitioner's own incriminating statements. The state court determination that some  
4 evidence existed was not unreasonable. Therefore, Petitioner's claim should be rejected.

5 Petitioner next argues the hearing officer should have relied on Investigative Services Unit  
6 Officer Mathus' determination of the nature of the item rather than Officer Davies'. Officer Davies  
7 testified that the item was a cell phone charger that consisted of a twenty-four inch long cord.  
8 Officer Mathus determined that the item was a cell-phone charging cord. The Court fails to see the  
9 difference.

10 Petitioner further complains that he was not placed on notice that the item constituted illegal  
11 contraband. As pointed out by the superior court, Petitioner is prohibited by Cal. Penal Code  
12 § 4575(a) from possessing wireless devices including cellular phones. A cell phone charger is an  
13 integral part of a cell phone. In addition, Petitioner had been found guilty of this same offense  
14 before.

15 In sum, all due process requirements were satisfied and the state court determination that the  
16 guilty finding was supported by "some evidence" was not unreasonable. In addition, the state court  
17 did not unreasonably determine the facts. Accordingly, Petitioner's claims are without merit and the  
18 petition should be denied.

### 19 **RECOMMENDATION**

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

23 This Findings and Recommendation is submitted to the assigned District Judge, pursuant to  
24 the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being served with the  
25 Findings and Recommendation, any party may file written objections with the Court and serve a  
26 copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's  
27 Findings and Recommendation." Any reply to the objections shall be served and filed within ten  
28 days after service of the objections. The parties are advised that failure to file objections within the

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
2 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: August 30, 2010

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE