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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GEORGE K. COLBERT,	)	1:10-cv-01532-SMS-HC
	)	
Petitioner,	)	ORDER SEVERING AND DISMISSING
	)	WITH LEAVE TO AMEND PETITIONER'S
v.	)	CLAIM CONCERNING THE SECOND
	)	DISCIPLINARY PROCEEDING (DOC. 1)
	)	
L. L. SCHULTEIS,	)	ORDER DIRECTING THE CLERK TO OPEN
	)	A NEW ACTION AND TO FILE THEREIN
Respondent.	)	A COPY OF THE PETITION AND OF
	)	THIS ORDER
	)	
	)	ORDER GRANTING PETITIONER LEAVE
	)	TO FILE A FIRST AMENDED PETITION
	)	IN THE NEW ACTION NO LATER THAN
	)	THIRTY (30) DAYS AFTER THE DATE
	)	OF SERVICE OF THIS ORDER

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on September 8, 2010 (doc. 5). Pending before the Court is the petition, which was filed on August 25, 2010.

1           I.   Screening the Petition

2           Rule 4 of the Rules Governing § 2254 Cases in the United  
3 States District Courts (Habeas Rules) requires the Court to make  
4 a preliminary review of each petition for writ of habeas corpus.  
5 The Court must summarily dismiss a petition "[i]f it plainly  
6 appears from the petition and any attached exhibits that the  
7 petitioner is not entitled to relief in the district court...."  
8 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.  
9 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.  
10 1990). Habeas Rule 2(c) requires that a petition 1) specify all  
11 grounds of relief available to the Petitioner; 2) state the facts  
12 supporting each ground; and 3) state the relief requested.  
13 Notice pleading is not sufficient; rather, the petition must  
14 state facts that point to a real possibility of constitutional  
15 error. Rule 4, Advisory Committee Notes, 1976 Adoption;  
16 O'Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge v.  
17 Allison, 431 U.S. 63, 75 n. 7 (1977)). Allegations in a petition  
18 that are vague, conclusory, or palpably incredible are subject to  
19 summary dismissal. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th  
20 Cir. 1990).

21           Further, the Court may dismiss a petition for writ of habeas  
22 corpus either on its own motion under Habeas Rule 4, pursuant to  
23 the respondent's motion to dismiss, or after an answer to the  
24 petition has been filed. Advisory Committee Notes to Habeas Rule  
25 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43  
26 (9th Cir. 2001).

27           Here, Petitioner, who at the time the petition was filed was  
28 an inmate of the California Correctional Institution (CCI) at

1 Tehachapi, California, complains of what appear to be two  
2 separate disciplinary proceedings that occurred at CCI. The  
3 first proceeding involved disrespect towards staff that allegedly  
4 was committed by Petitioner on September 5, 2008 (IAB case no.  
5 0813485, local log no. CCI-08-02744). (Pet. 9.) The second  
6 proceeding involved threatening a public official on December 1,  
7 2008 (IAB case no. 0818809, local log no. CCI-09-00132).

8 II. Due Process Requirements for Prison Disciplinary  
9 Proceedings

10 A district court may entertain a petition for a writ of  
11 habeas corpus by a person in custody pursuant to the judgment of  
12 a state court on the ground that the custody is in violation of  
13 the Constitution, laws, or treaties of the United States. 28  
14 U.S.C. §§ 2254(a), 2241(c)(3); Williams v. Taylor, 529 U.S. 362,  
15 375 n.7 (2000).

16 Title 28 U.S.C. § 2254 provides in pertinent part:

17 (d) An application for a writ of habeas corpus on  
18 behalf of a person in custody pursuant to the  
19 judgment of a State court shall not be granted  
20 with respect to any claim that was adjudicated  
21 on the merits in State court proceedings unless  
22 the adjudication of the claim-

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

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

(e) (1) In a proceeding instituted by an application  
for a writ of habeas corpus by a person in custody  
pursuant to the judgment of a State court, a  
determination of a factual issue made by a State  
court shall be presumed to be correct. The applicant  
shall have the burden of rebutting the presumption  
or correctness by clear and convincing evidence.

1 The Petitioner bears the burden of establishing that the decision  
2 of the state court was contrary to, or involved unreasonable  
3 application of, the precedents of the United States Supreme  
4 Court. Lambert v. Blodgett, 393 F.3d 943, 970 n.16 (9th Cir.  
5 2004); Baylor v. Estelle, 94 F.3d 1321, 1325 (9th Cir. 1996).

6 With respect to prison disciplinary proceedings, procedural  
7 due process of law requires that where the state has made good  
8 time subject to forfeiture only for serious misbehavior, then  
9 prisoners subject to a loss of good-time credits must be given  
10 advance written notice of the claimed violation, a right to call  
11 witnesses and present documentary evidence where it would not be  
12 unduly hazardous to institutional safety or correctional goals,  
13 and a written statement of the finder of fact as to the evidence  
14 relied upon and the reasons for disciplinary action taken. Wolff  
15 v. McDonnell, 418 U.S. 539, 563-64 (1974). Confrontation, cross-  
16 examination, and counsel are not required. Wolff, 418 U.S. at  
17 568-70.

18 Further, where good-time credits are a protected liberty  
19 interest, the decision to revoke credits must be supported by  
20 some evidence in the record. Superintendent v. Hill, 472 U.S.  
21 445, 454 (1985). The Court in Hill stated:

22 We hold that the requirements of due process are  
23 satisfied if some evidence supports the decision by the  
24 prison disciplinary board to revoke good time credits.  
25 This standard is met if "there was some evidence from  
26 which the conclusion of the administrative tribunal  
27 could be deduced...." United States ex rel. Vajtauer v.  
28 Commissioner of Immigration, 273 U.S., at 106, 47  
S.Ct., at 304. Ascertaining whether this standard is  
satisfied does not require examination of the entire  
record, independent assessment of the credibility of  
witnesses, or weighing of the evidence. Instead, the  
relevant question is whether there is any evidence in  
the record that could support the conclusion reached by

1 the disciplinary board. See ibid.; United States ex  
2 rel. Tisi v. Tod, 264 U.S. 131, 133-134, 44 S.Ct. 260,  
3 260-261, 68 L.Ed. 590 (1924); Willis v. Ciccone, 506  
4 F.2d 1011, 1018 (CA8 1974).

5 Superintendent v. Hill, 472 U.S. at 455-56. The Constitution  
6 does not require that the evidence logically preclude any  
7 conclusion other than the conclusion reached by the disciplinary  
8 board; rather, there need only be some evidence in order to  
9 ensure that there was some basis in fact for the decision.  
10 Superintendent v. Hill, 472 U.S. at 457.

11 With respect to the requirement that some evidence support  
12 the finding that Petitioner possessed the weapon, this Court does  
13 not make its own assessment of the credibility of witnesses or  
14 re-weigh the evidence; however, the Court must ascertain that the  
15 evidence has some indicia of reliability and, even if meager,  
16 "not so devoid of evidence that the findings of the disciplinary  
17 board were without support or otherwise arbitrary." Cato v.  
18 Rushen, 824 F.2d 703, 704-05 (9th Cir. 1987) (quoting  
19 Superintendent v. Hill, 472 U.S. 445, 457 (1985)).

20 In Cato v. Rushen, 824 F.2d at 705, the Court found that the  
21 Hill standard was not satisfied where the only evidence  
22 implicating the inmate was another inmate's statement that was  
23 related to prison officials through a confidential informant who  
24 had no first-hand knowledge of any relevant statements or actions  
25 by the inmate being disciplined, and whose polygraph results were  
26 inconclusive. In contrast, evidence evaluated and found to  
27 constitute "some evidence" supportive of various findings has  
28 included the report of a prison guard who saw several inmates  
fleeing an area after an assault on another inmate when no other

1 inmates were in the area, Superintendent v. Hill, 472 U.S. 456-  
2 57; the statement of a guard that the inmate had admitted a theft  
3 to supplement his income, coupled with corroborating evidence,  
4 Bostic v. Carlson, 884 F.2d 1267, 1270 (9th Cir. 1989); an  
5 inmate's admission and corroborating, circumstantial evidence,  
6 Crane v. Evans, 2009 WL 148273, \*3 (N.D.Cal. Feb. 2, 2009); and  
7 an inmate's admission of having engaged in the violation plus an  
8 officer's report of having heard a recording of the offending  
9 conversation, Dawson v. Norwood, 2010 WL 761226, \*1 (C.D.Cal.  
10 March 1, 2010).

11 III. Dismissal of the Claim concerning IAB Case No. 0818809  
12 (Second Disciplinary Proceeding)

13 A. Basis for Dismissal

14 Petitioner alleges the following with respect to IAB case  
15 number 0818809, local log number CCI-09-00132:

16 PETITIONER HAVE BEEN DENIED DUE PROCESS AND EQUAL  
17 PROTECTION IN VIOLATION OF THE FOURTEENTH AMENDMENT  
18 BY AN ARBITRARY REVIEW BOARD. ON 12-1-08, I WAS  
19 GIVEN A RULE VIOLATION, AND FOUND GUILTY WITHOUT  
PROCEDURAL DUE PROCESS. I WAS NOT ALLOWED TO PRESENT  
DOCUMENTARY EVIDENCE, NOR HAVE LEGAL ASSISTANCE; THIS  
SITUATION STEM FROM COVER UP, TO DENIED (SIC)  
PETITIONER'S RIGHTS.

20 (Pet. 4.) He previously alleged that with respect to the two  
21 disciplinary proceedings, he forfeited sixty (60) days of credit  
22 and lost thirty (30) days. (Pet. 1.) It appears that the  
23 thirty-day forfeiture of credit pertained to the other offense  
24 concerning disrespect for staff in September 2008, so it is  
25 assumed that Petitioner lost sixty days for this incident, which  
26 occurred on December 1, 2008. (Pet. 9, 7.)

27 The documentation attached by Petitioner to the petition  
28 includes a director's level appeal decision on the rules

1 violation. (Pet. 7.) The violation concerned threatening a  
2 public official, which Petitioner denied. Petitioner argued on  
3 appeal that when a correctional counselor approached his cell  
4 door and discussed confidential information on the tier where  
5 other inmates in the section could hear, Petitioner informed the  
6 officer that he was going to appeal the actions; in retaliation,  
7 the rules violation report issued. (Id.) However, in denying  
8 the appeal at the director's level, the chief of inmate appeals  
9 stated that the "Reporting Employee documentation reflects a true  
10 account of what happened." (Id.) It thus appears that the  
11 decision rested upon some evidence from an employee who appears  
12 to have had personal knowledge of the relevant events.

13 The appeal decision further recited that all procedural due  
14 process requirements were met, including receipt by Petitioner of  
15 the rules violation report within fifteen days of discovery of  
16 the incident, receipt of all non-confidential documentation  
17 relied on in the hearing at least twenty-four hours prior to the  
18 hearing, a hearing within thirty days of the date of receipt of  
19 the violation, and a finding that was based on a preponderance of  
20 the evidence. (Pet. 7.)

21 Petitioner's allegations that he was denied due process and  
22 equal protection are merely generalized assertions that are  
23 devoid of specific facts.

24 Petitioner's allegation that he was not allowed to present  
25 documentary evidence does not state a claim that warrants habeas  
26 relief because a prisoner has a right to present documentary  
27 evidence only where it would not be unduly hazardous to  
28 institutional safety or correctional goals. Wolff v. McDonnell,

1 418 U.S. 539, 563-64 (1974). The decision is left to the sound  
2 discretion of the prison officials. Wolff v. McDonnell, 418 U.S.  
3 539, 566; Ponte v. Real, 471 U.S. 491, 495 (1984).

4 Here, the documentation of the director's appeal reflects  
5 that Petitioner did request witnesses that the senior hearing  
6 officer addressed in the hearing; however, it did not contain any  
7 reference to documentary evidence. (Pet. 7.) Petitioner does  
8 not describe the factual context in which any request to present  
9 documentary evidence was made; thus, a reader must speculate as  
10 to any effect of documentary evidence on institutional safety or  
11 correctional goals. Further, Petitioner does not identify or  
12 describe the documentary evidence in question. Thus, Petitioner  
13 has not alleged facts that point to a real possibility that any  
14 prejudice was suffered by Petitioner as a result of any  
15 prohibition of presentation of documentary evidence. See,  
16 Schenck v. Edwards, 921 F.Supp. 679, 687-88 (E.D.Wash. 1996).

17 Petitioner's allegation that he was not allowed to have  
18 legal assistance does not state specific facts that point to a  
19 real possibility of constitutional error. Petitioner was not  
20 entitled to the assistance of counsel. Wolff, 418 U.S. at 568-  
21 70. Further, the it appears from a reference in the director's  
22 appeal that Petitioner met the pertinent criteria for an  
23 investigative employee but was simply not assigned a staff  
24 assistant. Petitioner's allegation concerning "legal assistance"  
25 is vague and conclusory and is thus subject to summary dismissal.

26 In summary, the Court concludes that with respect to the  
27 second disciplinary proceeding, Petitioner has failed to allege  
28 specific facts that point to a real possibility that his rights



1 to due process of law or equal protection were violated.

2 Petitioner will be given an opportunity to file a first  
3 amended petition to cure the deficiencies.

4 However, because of the improper joinder of claims in this  
5 petition that is discussed hereinbelow, Petitioner's claims  
6 concerning the second disciplinary hearing will be severed and  
7 will proceed in a new, separate action to be opened by the Clerk.  
8 Petitioner may file a first amended petition concerning the  
9 second disciplinary proceeding in the new action.

10 B. Improper Joinder of Claims

11 Rule 2(e) of the Rules Governing Section 2254 Cases in the  
12 United States District Courts (Habeas Rules) provides:

13 A petitioner who seeks relief from judgments of more  
14 than one state court must file a separate petition  
covering the judgment or judgments of each court.

15 Petitioner thus cannot properly challenge the judgments of two  
16 different tribunals in a single proceeding. Bianchi v. Blodgett,  
17 925 F.2d 305, 308-11 (9th Cir. 1991).

18 Further, a court has inherent power to control its docket  
19 and the disposition of its cases with economy of time and effort  
20 for both the court and the parties. Landis v. North American  
21 Co., 299 U.S. 248, 254-255 (1936); Ferdik v. Bonzelet, 963 F.2d  
22 1258, 1260 (9th Cir. 1992).

23 Here, Petitioner has not specifically described the  
24 proceeding or proceedings in which he presented his claims to the  
25 state courts; thus, the precise number of state court decisions  
26 to be reviewed is unclear. It is possible that Petitioner is  
27 seeking this Court to review more than one state court decision.  
28 Further, he is challenging two different decisions in one

1 petition.

2 In order to avoid placing an undue burden on the parties and  
3 the Court, and to increase judicial efficiency, the Court  
4 exercises its discretion to require Petitioner to proceed with  
5 his claims concerning the two separate disciplinary proceedings  
6 in two separate actions.

7 The presence in this single action of claims concerning two  
8 distinct disciplinary proceedings is inconsistent with the rules  
9 governing habeas corpus proceedings. Although Petitioner will be  
10 given an opportunity to file a first amended petition with  
11 respect to his claims concerning the second disciplinary  
12 proceeding, the Court will sever these claims and make them the  
13 subject of a new, separate action. Petitioner will be required  
14 to file in the new action a first amended petition that bears the  
15 case number of the new action.

16 Petitioner's claims concerning the first disciplinary  
17 proceeding will remain pending in the present action. By a  
18 separate order in this proceeding, the Court will order the  
19 Respondent to file a response to the petition in this action with  
20 respect to the claims concerning the first disciplinary  
21 proceeding.

22 IV. Disposition

23 Accordingly, it is ORDERED that:

24 1) Petitioner's claims concerning the second disciplinary  
25 proceeding are SEVERED from the remaining claims in this action  
26 and SHALL PROCEED as a separate action, while the instant action  
27 concerning Petitioner's remaining claims concerning the first  
28 disciplinary proceeding (IAB case no. 0813485, local log no. CCI-

1 08-02744) shall also remain pending and open; and

2 2) Petitioner's claims concerning the second disciplinary  
3 proceeding (IAB case no. 0818809, local log no. CCI-09-00132)  
4 are DISMISSED with leave to amend; and

5 3) The Clerk is DIRECTED as follows:

6 a) To open a new case in which Petitioner shall  
7 proceed with his claims concerning the second disciplinary  
8 proceeding; and

9 b) To file in the new case a copy of the initial  
10 petition in this action (doc. 1) and a copy of this order  
11 granting Petitioner leave to file a first amended petition; and

12 c) To assign the new case to the undersigned  
13 Magistrate Judge, the Honorable Sandra M. Snyder; and

14 4) Petitioner is GRANTED thirty (30) days from the date of  
15 service of this order to file an amended petition in the new  
16 action in compliance with this order; and

17 5) The Clerk of the Court is DIRECTED to send Petitioner  
18 with this order a form petition pursuant to 28 U.S.C. § 2254.

19 Petitioner is forewarned that a failure to comply with this  
20 order will be considered to be a failure to comply with an order  
21 of the Court and will result in dismissal of the action.

22  
23 IT IS SO ORDERED.

24 **Dated: January 26, 2011**

**/s/ Sandra M. Snyder**  
**UNITED STATES MAGISTRATE JUDGE**