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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RONALD PATTERSON,

CASE NO. 1:11-cv-01552 GSA PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO FILE AMENDED COMPLAINT
WITHIN THIRTY DAYS

v.

T. E. SMITH, et al.,

(ECF No. 1)

Defendants.

Screening Order

I. Screening Requirement

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 **II. Plaintiff's Claims**

2 On August 15, 2009, a disturbance occurred between Black and Hispanic inmates at Avenal
3 State Prison. Plaintiff was issued a lock-up order for his participation, and was placed in
4 Administrative Segregation (AdSeg). On August 16, 2009, Plaintiff was moved to Solano State
5 Prison pending investigation. Plaintiff was charged, and on October 2, 2009, was found guilty of
6 participation in a riot, and assessed a 4 month Security Housing Unit (SHU) term. Plaintiff appealed
7 the guilty finding, and the disciplinary charge was re-heard, with a finding of not guilty. The original
8 guilty finding was reversed based upon a diagram entered into evidence at the original hearing.
9 Plaintiff was referred to as number 190 on the crime scene diagram. On appeal, it was found that
10 number 190 did not exist on the crime scene diagram.

11 Plaintiff alleges that as a result of this process, he was moved farther away from family and
12 friends, and also lost items of personal property. Plaintiff also lost his prison job. Plaintiff filed a
13 claim with the Board of Victim Compensation, which was denied. Plaintiff alleges that “if all the
14 defendants would have done their job thoroughly, then I wouldn’t have been wrongly accused of
15 participating in a riot. By doing so I was falsely imprisoned for my SHU term” (Compl. ¶ IV.)

16 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under
17 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal
18 law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives
19 another of a constitutional right, where that person ‘does an affirmative act, participates in another’s
20 affirmative acts, or omits to perform an act which [that person] is legally required to do that causes
21 the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007)
22 (quoting Johnson v. Duffy, 588 F.2d 740, 743 9th Cir. 1978)). “[T]he ‘requisite causal connection
23 can be established not only by some kind of direct, personal participation in the deprivation, but also
24 by setting in motion a series of acts by others which the actors knows or reasonably should know
25 would cause others to inflict the constitutional injury.’” Id. (quoting Johnson at 743.44).

26 **A. Prison Disciplinary Process**

27 The Due Process Clause protects prisoners from being deprived of liberty without due
28 process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). In order to state a cause of action

1 for deprivation of due process, a plaintiff must first establish the existence of a liberty interest for
2 which the protection is sought. “States may under certain circumstances create liberty interests
3 which are protected by the Due Process Clause.” Sandin v. Conner, 515 U.S. 472, 483-84 (1995).
4 Liberty interests created by state law are generally limited to freedom from restraint which “imposes
5 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”
6 Id. 515 U.S. at 484.

7 “Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply
8 of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell, 418 U.S. 539,
9 556 (1974). With respect to prison disciplinary proceedings, the minimum procedural requirements
10 that must be met are: (1) written notice of the charges; (2) at least 24 hours between the time the
11 prisoner receives written notice and the time of the hearing, so that the prisoner may prepare his
12 defense; (3) a written statement by the fact finders of the evidence they rely on and reasons for taking
13 disciplinary action; (4) the right of the prisoner to call witnesses and present documentary evidence
14 in his defense, when permitting him to do so would not be unduly hazardous to institutional safety
15 or correctional goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the
16 issues presented are legally complex. Id. at 563-71. Confrontation and cross examination are not
17 generally required. Id. at 567. As long as the five minimum Wolff requirements are met, due
18 process has been satisfied. Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994).

19 Plaintiff alleges no facts indicating that he was deprived of due process at his disciplinary
20 hearing. That Plaintiff’s conviction was reversed does not subject the hearing officer to liability.

21 Further, Plaintiff is advised that when a prisoner challenges the legality or duration of his
22 custody, or raises a constitutional challenge which could entitle him to an earlier release, his sole
23 federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v.
24 Kenny, 907 F.2d 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991).

25 Where the complaint states a habeas claim instead of a § 1983 claim, the court should dismiss
26 the claim without prejudice for failure to exhaust, rather than converting it to a habeas and
27 addressing it on the merits. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997); Trimble v.
28 City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995). Where the complaint alleges claims that sound

1 in habeas and claims that do not, the court should allow the non-habeas claims to proceed. See
2 Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675, 681-82 (9th Cir. 1984).

3 **B. Transfer**

4 Regarding any claim that Plaintiff was transferred to a facility away from his family as a
5 result of his disciplinary process, prisoners have no liberty interest in being housed at a particular
6 institution. See Olim v. Wakinekona, 461 U.S. 238, 245 (1983); Meachum v. Fano, 427 U.S. 215,
7 225-27 (1976); United States v. Brown, 59 F.3d 102, 105 (9th Cir. 1991)(per curiam); Johnson v.
8 Moore, 948 F.2d 517, 519 (9th Cir. 1991)(per curiam); Coakley v. Murphy, 884 F.2d 1218, 1221 (9th
9 Cir. 1989). This claim should therefore be dismissed.

10 **C. Property**

11 A state prisoner has no cause of action under 42 U.S.C. sect. 1983 for an unauthorized
12 deprivation of property, either intentional or negligent, by a state employee if a meaningful state
13 post-deprivation remedy for the loss is available. Hudson v. Palmer, 468 U.S. 517, 533 (1984).
14 California law provides an adequate post-deprivation remedy for any property deprivations. Barnett
15 v. Centoni, 31 F.3d 813, 816-817 (9th Cir. 1994). Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950-
16 950.2 . Any claim for deprivation of personal property should therefore be dismissed.

17 **D. Prison Job**

18 Regarding the loss of Plaintiff's prison job, prisoners have no constitutional right to a prison
19 job or educational opportunities. Rizzo v. Dawson, 778 F.2d 527, 530 (9th Cir. 1985); Baumann v.
20 Arizona Dep't of Corrections, 754 F.2d 841, 846 (9th Cir. 1985); Hoptowit v. Ray, 682 F.2d 1237,
21 1254-55 (9th Cir. 1982). Prisoners have no protected constitutional right to any work assignment.
22 Toussaint v. McCarthy, 801 F.2d 1080, 1094-95 (9th Cir. 1986), cert. denied 481 U.S. 1069 (1987).
23 This claim should therefore be dismissed.

24 **III. Conclusion and Order**

25 The Court has screened Plaintiff's complaint and finds that it does not state any claims upon
26 which relief may be granted under section 1983. The Court will provide Plaintiff with the
27 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.
28 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not

1 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,
2 507 F.3d at 607 (no “buckshot” complaints).

3 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
4 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights,
5 Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must be
6 [sufficient] to raise a right to relief above the speculative level” Bell Atlantic Corp. v.
7 Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

8 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
9 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
10 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
11 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an original
12 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing
13 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
14 1474.

15 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a claim;
- 17 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 18 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
19 amended complaint;
- 20 4. Plaintiff may not add any new, unrelated claims to this action via his amended
21 complaint and any attempt to do so will result in an order striking the amended
22 complaint; and
- 23 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
24 action be dismissed, with prejudice, for failure to state a claim.

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27 IT IS SO ORDERED.

28 **Dated: December 15, 2011**

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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