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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**

8  
9 JORGE LUIS SALGADO-PENA,

10 Petitioner,

11 v.

12 MICHAEL L. BENOVA,

13 Respondent.

Case No. 1:13-cv-01528-BAM HC

ORDER DISMISSING GROUND TWO OF  
THE PETITION FOR HABEAS CORPUS  
AS MOOT AND DENYING PETITION  
WITH REGARD TO GROUND ONE

(Docs. 1 and 18)

14  
15 Petitioner Jorge Luis Salgado-Pena, is a federal prisoner proceeding with a petition for writ  
16 of habeas corpus pursuant to 28 U.S.C. § 2241. He contends (1) that he was inappropriately found to  
17 have assaulted a correctional officer since he struck the corrections officer while he was ill and  
18 unaware of his actions and (2) that his due process rights were violated when his disciplinary hearing  
19 was conducted by a Disciplinary Hearing Officer ("DHO") employed by the contract institution in  
20 which he was confined. Because the Bureau of Prisons ("BOP") subsequently provided Petitioner  
21 with a new disciplinary hearing conducted by a DHO employed by BOP, Respondent moved to  
22 dismiss the petition as moot.  
23

24 The Court's having referred the matter to the Magistrate Judge pursuant to 28 U.S.C. §  
25 636(b)(1) and Local Rules 302 and 304,<sup>1</sup> the undersigned agrees that Petitioner's claim that the  
26 contractor-employed DHO lacked authority to preside over his disciplinary proceedings is now  
27

28 <sup>1</sup> The parties consented to the jurisdiction of the United States Magistrate Judge. (Docs. 3, 7). For that reason, the action was reassigned to the Honorable Barbara A. McAuliffe for all purposes. See 28 U.S.C. § 636(c).

1 moot. Because the rehearing did not address Petitioner's due process claim, that claim has survived.  
2 Because the evidence was sufficient to support the DHO's determination, the Court denies the  
3 petition.

4 **I. Background**

5 On April 22, 1998, the U.S. District Court for the District of Arizona sentenced Petitioner to  
6 an aggregate term of 295 months' imprisonment following his conviction for (1) conspiracy to  
7 distribute methamphetamine (21 U.S.C. §§ 841(a) and 846); (2) possession with intent to distribute  
8 methamphetamine (21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii)); and (3) carrying a firearm during a  
9 drug trafficking crime (18 U.S.C. § 924(c)(1)). Petitioner is currently in the custody of the BOP at  
10 the Taft Correctional Institution, Taft, California ("Taft"). His projected release date is December  
11 25, 2018, with good conduct time.  
12

13 In the early afternoon of July 4, 2012, Petitioner participated in a six-mile (fifteen-lap)  
14 running race on an outdoor track at Taft. The day was hot, and Petitioner collapsed after running  
15 more than forty minutes and completing more than 14 laps. Upon arrival at the prison hospital,  
16 although Petitioner was alert and oriented, his temperature was 101.8 ° F., and his gait was unsteady.  
17 The nurse on duty diagnosed heat exhaustion and contacted a doctor, who ordered intravenous  
18 fluids. Petitioner, who declined intravenous fluids, was kept for observation. In the course of his  
19 treatment, Petitioner punched a correctional officer, A. Garcia, who was serving as translator, in the  
20 upper chest with a closed fist. Correctional Officer Fazendin witnessed the incident and restrained  
21 Petitioner.  
22

23 When Petitioner appeared before the DHO on August 21, 2012, he apologized for having  
24 struck the officer but testified that he did not remember doing so. Petitioner explained that at the  
25 time of the incident, he was not feeling well and "was out of it." Doc. 8-2 at 2. Counselor F.  
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1 Watkins, Petitioner's staff representative testified, "This is out of character for him. He is not a  
2 management problem and he's one of my better inmates." Doc. 8-2 at 2.

3 Because the medical evaluation form indicated that Petitioner was alert and oriented, the  
4 DHO found Petitioner's testimony not credible. Accordingly, he found that Petitioner had  
5 committed the prohibited act of assault, Code 224, and recommended one month of disciplinary  
6 segregation and disallowance of 27 days of good conduct time. On August 20, 2013, BOP staff  
7 certified the DHO's findings and imposed the recommended sanctions. Petitioner's subsequent  
8 administrative appeals, solely on the question of the sufficiency of the evidence to support a finding  
9 that he violated Code 224 (assault), were denied.  
10

11 On September 23, 2013, Petitioner filed the pending petition for writ of habeas corpus,  
12 contending that his due process rights were violated during the disciplinary process when a DHO not  
13 employed by the BOP disallowed 41 days of good conduct time and that the evidence did not  
14 support the finding that he violated Code 224 (assault). Respondent answered on December 2,  
15 2013, contending (1) that the evidence supported the finding that Petitioner violated Code 224  
16 (assault) and (2) that Petitioner had not exhausted his due process claim that the DHO, employed by  
17 the contractor running Taft, was not authorized to conduct his disciplinary hearing. Petitioner  
18 replied on September 11, 2014. (Although Petitioner moved for leave to file a supplementary  
19 traverse, which the Court granted, he never filed a supplementary traverse.)  
20

21 On March 11, 2015, the BOP provided Petitioner with a new hearing before a DHO  
22 employed by BOP. Based on the evidence presented, the BOP DHO found that Petitioner violated  
23 Code 224 (assault) as charged and imposed one month of disciplinary segregation and disallowance  
24 of 27 days of good conduct time.  
25

26 On March 23, 2015, after the BOP DHO had issued his determination, Respondent moved to  
27 dismiss the petition as moot. Arguing that the motion for dismissal does not address the issue of the  
28

1 sufficiency of the evidence to support the finding that he violated Code 224 (assault), Petitioner  
2 opposes the dismissal motion. The parties do not dispute jurisdiction or venue.

## 3 **II. Is Petition for Writ of Habeas Corpus Moot?**

4 Since Article III of the Constitution extends federal court jurisdiction only to actual cases and  
5 controversies, courts lack jurisdiction to decide issues or cases that are moot. *Iron Arrow Honor*  
6 *Society v. Heckler*, 464 U.S. 67, 70-71 (1983). A case or controversy exists only when a litigant has  
7 a personal stake in the outcome through all stages of the federal judicial proceedings and an actual  
8 injury that can be addressed by a favorable judicial decision. *Id.* For example, a petition for a writ  
9 of habeas corpus is moot when the petitioner's claim for relief cannot be redressed by the court's  
10 granting the petition. *Burnett v. Lampert*, 432 F.3d 996, 1000-01 (9<sup>th</sup> Cir. 2005). A court must  
11 dismiss a moot petition because nothing remains before the court for resolution. *Spencer v. Kemna*,  
12 523 U.S. 1, 7 (1998).

### 14 **A. Authority of a Taft-Employed DHO to Conduct Disciplinary Hearing**

15 The parties here do not dispute that the disciplinary charges against Petitioner have been  
16 reheard by a DHO employed by BOP. The second ground of the petition contends that the Taft-  
17 employed DHO lacked authority to conduct the disciplinary hearing against Petitioner. Petitioner  
18 does not dispute that the rehearing rendered the second ground of the petition moot. The Court  
19 agrees that the second ground of the petition has been resolved and is now moot.

### 21 **B. Sufficiency of Evidence**

22 Petitioner argues, however, that the Court retains jurisdiction over the first ground, which  
23 challenged the sufficiency of the evidence to support the first DHO's findings and conclusions  
24 following the first hearing. The Court agrees that it retains jurisdiction.

26 [A]n appeal should . . . be dismissed as moot when, by virtue of an  
27 intervening event, a court of appeals cannot grant "any effectual relief whatever"  
28 in favor of the appellant. [*Mills v. Green*, 159 U.S. 651, 653 (1895)]. The  
available remedy, however, does not need to be "fully satisfactory" to avoid

1 mootness. *Church of Scientology of California v. United States*, 506 U.S. 9,  
2 13 . . . (1992). To the contrary, even the availability of "a partial remedy" is  
3 "sufficient to prevent a case from being moot." *Ibid*.

4 *Calderon v. Moore*, 518 U.S. 149, 150 (1996).

5 "When one of the several issues becomes moot, the remaining live issues supply  
6 the constitutional requirement of a case or controversy." *Powell v. McCormack*, 395 U.S.  
7 486, 497 (1969) "As long as the parties have a concrete interest, however small, in the  
8 outcome of the litigation, the case is not moot." *Chafin v. Chafin*, 133 S.Ct. 1017, 1023  
9 (2013). In this case, substitution of a DHO employed by BOP did not change the  
10 substantive outcome of the disciplinary hearing since his application of the disciplinary  
11 rules to the facts of the underlying incident result in the same conclusion and sanctions  
12 raised as ground one in the petition.

13 **III. Did the Evidence Support the Assault Finding and Imposition of Sanctions?**

14 In the first ground of the petition, Petitioner contends that the evidence supporting  
15 the finding that he violated Code 224 (assault) was constitutionally insufficient, violating  
16 his due process rights.

17 To determine whether the evidence supporting a conviction is so insufficient that  
18 it violates the constitutional guarantee of due process of law, a court evaluating a habeas  
19 petition must carefully review the record to determine whether a rational trier of fact  
20 could have found the essential elements of the offense beyond a reasonable doubt.  
21 *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Windham v. Merkle*, 163 F.3d 1092, 1101  
22 (9<sup>th</sup> Cir. 1998). It must consider the evidence in the light most favorable to the  
23 prosecution, assuming that the trier of fact weighed the evidence, resolved conflicting  
24 evidence, and drew reasonable inferences from the facts in the manner that most supports  
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1 the verdict. *Jackson*, 443 U.S. at 319; *Jones v. Wood*, 114 F.3d 1002, 1008 (9<sup>th</sup> Cir.  
2 1997).

3 Here, although Petitioner concedes that he struck Officer Garcia, he urges the  
4 Court to interpret the evidence in a more favorable light than the DHO did, concluding  
5 that he struck the officer while disoriented from the effects of his heat exhaustion.  
6 Because the DHO reasonably could have reached the conclusion that Petitioner was  
7 culpable of assault, the Court is bound by his determination. The relevant inquiry is not  
8 whether the evidence excludes every hypothesis except guilt, but whether the trier of fact  
9 could reasonably have reached its verdict. *United States v. Mares*, 940 F.2d 455, 458 (9<sup>th</sup>  
10 Cir. 1991).

12 Whether or not the Court is persuaded that Petitioner's assault on Officer Garcia  
13 was out of character or that it was an unintentional effect of his illness, a trier of fact  
14 could reasonably have reached the conclusion reached by both DHOs. Petitioner  
15 admitted that he struck the officer, and hospital records indicate that Petitioner was alert  
16 and oriented when he did so. Accordingly, the Court must deny the petition for writ of  
17 habeas corpus.  
18

### 19 **III. Certificate of Appealability**

20 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal  
21 a district court's denial of his petition, but may only appeal in certain circumstances.  
22 *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in  
23 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which  
24 provides:  
25

26 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
27 district judge, the final order shall be subject to review, on appeal, by the court of  
28 appeals for the circuit in which the proceeding is held.

1 (b) There shall be no right of appeal from a final order in a proceeding to test the  
2 validity of a warrant to remove to another district or place for commitment or  
3 trial a person charged with a criminal offense against the United States, or to test  
4 the validity of such person's detention pending removal proceedings.

5 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
6 appeal may not be taken to the court of appeals from—

7 (A) the final order in a habeas corpus proceeding in which the  
8 detention complained of arises out of process issued by a State court;  
9 or

10 (B) the final order in a proceeding under section 2255.

11 (2) A certificate of appealability may issue under paragraph (1) only if the  
12 applicant has made a substantial showing of the denial of a constitutional  
13 right.

14 (3) The certificate of appealability under paragraph (1) shall indicate  
15 which specific issues or issues satisfy the showing required by  
16 paragraph (2).

17 If a court denies a petition, the court may only issue a certificate of appealability "if jurists of  
18 reason could disagree with the district court's resolution of his constitutional claims or that jurists  
19 could conclude the issues presented are adequate to deserve encouragement to proceed further."  
20 *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Although the petitioner is  
21 not required to prove the merits of his case, he must demonstrate "something more than the absence  
22 of frivolity or the existence of mere good faith on his . . . part." *Miller-El*, 537 U.S. at 338.

23 In the present case, the Court finds that reasonable jurists would not find the Court's  
24 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
25 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
26 showing of the denial of a constitutional right. Accordingly, undersigned recommends that the Court  
27 decline to issue a certificate of appealability.

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1 **IV. Conclusion and Order**

2 The Court hereby DISMISSES with prejudice ground 2 of the petition for writ of habeas  
3 corpus and DENIES the petition for writ habeas corpus on the remaining ground of constitutional  
4 insufficiency of the evidence to support the disciplinary findings and sanctions. The Court  
5 DECLINES to issue a certificate of appealability. The Clerk of Court is DIRECTED to enter  
6 judgment for Respondent.

7 IT IS SO ORDERED.  
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9 Dated: June 15, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE