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6 **UNITED STATES DISTRICT COURT**

7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 **RODNEY BUTLER,**

10 **Petitioner,**

11 **v.**

12 **AUDREY GILL, Warden,**

13 **Respondent.**
14

Case No. 1:14-cv-00022-BAM HC

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

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16 Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus
17 pursuant to 28 U.S.C. § 2241.¹ He contends that the Bureau of Prisons ("BOP") violated his right
18 to due process by denying him access to a videotape of Unit C-1 Housing or a screen shot of its
19 inmate bulletin board, which Petitioner alleges would reveal that an April 17, 2012 order of Warden
20 P. Copenhaver, on which Petitioner's disciplinary sanctions were partially premised, was never
21 posted. Petitioner contends that denial of the videotape or a screenshot denied his right to present
22 evidence in a disciplinary hearing.

23 **I. Background**

24 On July 19, 2007, the U.S. District Court for the Eastern District of California sentenced
25 Petitioner to 240 months' imprisonment after he pleaded guilty to conspiracy to possess cocaine
26 with intent to distribute (21 U.S.C. § 846). At the time of the alleged disciplinary infractions,
27 Petitioner, who remains in the custody of the BOP, was incarcerated at the Federal

28 ¹ Pursuant to 28 U.S.C. § 636(c)(1), both parties consented, in writing, to the jurisdiction of a United States Magistrate Judge to conduct all further proceedings in this case, including the entry of final judgment.

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2 Correctional Institution, Mendota, California. His projected release date is January 31, 2022, with
3 good conduct time.

4 On April 17, 2012, Warden Paul Copenhaver issued a memorandum for the inmate
5 population, advising them that the Court Security Act had added two provisions: (1) a criminal
6 offense for filing, attempting to file, or conspiring to file a false lien or encumbrance against the
7 real or personal property of a federal judge or federal law enforcement officer (18 U.S.C. § 1521),
8 and (2) making publicly available "restricted personal information" about a "covered person" with
9 the intent to threaten, intimidate, or incite a crime of violence against such person (18 U.S.C. §
10 119). "Covered persons," explained the warden, include court officers, jurors, witnesses,
11 informants, and federal law enforcement officers, including BOP employees. Filing a lien against a
12 "covered person" can constitute a violation of these statutes. Warden Copenhaver announced that
13 beginning one week from the memorandum's date, all inmates would be prohibited from obtaining,
14 possessing, or creating UCC filing statements. Inmates would also be prohibited from possessing
15 the personal information of any "covered person" or their immediate family member, including but
16 not limited to home address, home telephone number, social security number, personal email
17 address, or home fax number. An inmate with a legitimate reason for possessing such information,
18 such as because a "covered person" was his or her relative, was directed to advise unit staff.
19 Inmates were warned that possession of UCC documents or the personal information of a "covered
20 person" would result in confiscation of the prohibited matter and disciplinary charges.

21 Incident Report No. 2304325, dated May 15, 2012, charged Petitioner with possession of
22 anything unauthorized (Code 305), use of the mail for abuses other than criminal activity (Code
23 296), and use of the telephone for abuses other than illegal activity (Code 297). SIS Technician B.
24 Bragan described the incident:

25 On May 15, 2012, at 10:00 a.m. SIS completed review of Inmate Rodney
26 Butler[s] Reg. No. 91084-012 property which contained multiple Uniform
27 Commercial Code forms which inmates are not allowed to possess in accordance
28 with [the] Implementation of Court Security Act.

1 Inmate Butler sent out a letter on May 1, 2012 to [redaction] San Jose, CA 95127.
2 Inside the envelope contained two unauthorized Uniform Commercial Code forms
3 that were filled out by inmate Butler. Inmate Butler provided a frivolous address
4 of 1623 Darwin Street, Seaside, CA 93955 on the forms as well. Inmate Butler
5 abused the mail by directing others to send in unauthorized forms for him with a
6 fictitious return address.

7 Inmate Butler placed a phone call on 5/5/2012 at 4:58 p.m. to phone number 916-
8 710-5825. During this call inmate Butler asks the individual to download and fill
9 out a Uniform Commercial Code Financing Statement form from SOS.SA.GOV.
10 On May 7, 2012, at 5:25 p.m., Butler also placed a call to this number. During
11 this call inmate Butler directs the individual how to fill out the Uniform
12 Commercial Code Financing Statement Amendment form using inmate Butler's
13 info. The content of these calls is prohibited due to the fact that inmate Butler had
14 his outside contact fill out unauthorized Uniform Commercial Code forms using
15 erroneous information, such as incorrect address, and use of Butler's information.

16 Doc. 15-1 at 34.

17 Prison staff became aware of Petitioner's actions when the Post Office returned the letter,
18 which had been sent certified, because the intended recipient's address was vacant. The envelope
19 contained the UCC statements, which sought to vacate Petitioner's driver's license, judgment and
20 commitment, or social security number. The specified debtor was "John Henry Doe," whose
21 address was "[in] care of: Post Office Box 9999, Los Angeles 90010 California." Doc. 15-1 at 45.

22 When contacted by Lt. E. Torres, who investigated the incident, Petitioner stated, "First,
23 1623 Darwin is not a frivolous address and second, I did not violate any finance statements." Doc.
24 15-1 at 35. The Unit Disciplinary Committee referred the matter to the Disciplinary Hearing
25 Officer, recommending maximum punishment.

26 DHO J. De Vore heard conducted a disciplinary hearing on May 21, 2012. Petitioner
27 declined the assistance of a staff representative.

28 Butler claimed the memorandum indicating UCC forms were contraband was
never posted. He claimed the UCC form was submitted to delete his Social
Security Number and Driver's License number. He said he did use another
address to have correspondence routed through and it was his home.

Doc. 15-1 at 30.

1 The DHO considered the following documentary evidence: the incident report and
2 investigation, Warden Copenhaver's memorandum, the envelope sent by Petitioner, and eight pages
3 of UCC filing statements. Petitioner requested no witnesses or evidence. Nothing in the DHO's
4 report indicates that Petitioner requested that Respondent provide him or the DHO with any
5 evidence.

6 The DHO concluded that Petitioner had committed the three code violations of which he
7 was accused. The DHO made the following findings and conclusions:
8

9 The DHO relied on the following: The summary of the review of your outgoing
10 correspondence that was conducted on 5-15-2012. During this review staff found
11 you, Inmate Butler, Reg. No. 91084-012, were sending out a letter through the US
12 Postal Service that contained several Uniform Commercial Code (UCC) forms.
13 These forms were sent to an individual in the public with the intention of having
14 them forwarded to another address. Additionally, you provided a return address
15 with your name but not the institution's address where you are currently
16 incarcerated. A review of your phone records indicated that you had placed a
17 phone call to 916-710-5825 on 5-5-2012. During the phone call, you had
18 discussed having the individual download and prepare UCC forms. On 5-7-2012
19 you placed another call to the same number and instructed the individual to utilize
20 the address of 1623 Darwin on the forms. A review of the UCC forms indicated
21 that the address of 1623 Darwin was listed as your address in block B "SEND
22 ACKNOWLEDGEMENT TO (NAME AND ADDRESS)." You utilized the
23 phone to arrange, facilitate and further the abuse of the mail by masking your true
24 address which is "RODNEY BUTLER, Reg. No. 910840012, Unit C, PO Box 9,
25 Mendota, CA 93640." The UCC forms indicated the information contained on
26 the forms directly related to you yet you used a return address that indicated you
27 were masking your true location to the recipient of the UCC forms. The UCC
28 forms contained information that you were attempting to have your Judgment and
Commitment deleted. You intentionally used a third party to forward the UCC
forms and utilized a false return address in an effort to not allow the recipient and
reviewer of the documents to know you were incarcerated. You used the phone to
further that act of misconduct.

23 The DHO reviewed the memorandum from the Warden to the inmate population
24 at the facility you were incarcerated. This memorandum dated 4-17-2012 put the
25 inmate population on notice that the possession of UCC forms was prohibited
26 effective one week from the dated memorandum. The envelope with the UCC
27 forms was postmarked 5-1-2012, more than one week from the posting of the
28 memorandum. The DHO took into consideration your claim the memorandum
was not distributed to the inmate population, however, the SHU Lieutenant,
Lieutenant Marlow, who was present at the hearing examined the memorandum
and said the memo was in fact posted for the inmate population on the date the
memorandum was dated. The DHO finds you have received notice that the

1 document was not authorized for retention. You have an incentive to avoid the
2 consequences of your actions where Lieutenant Marlow had no motive to
misrepresent the posting of the memorandum.

3 The DHO also considered your statement that the UCC form was filled out by you
4 to delete your driver's license and social security numbers. However, the DHO
5 read the UCC filing and found you were attempting to have your Judgment and
Commitment deleted.

6 The DHO noted that you did not deny or refute the facts contained in section 11
7 of the incident report regarding the mail, the address used or the phone call. You
8 claimed you were using your home address as the address you would receive
9 mail. The DHO read a handwritten note include in the UCC filing envelope you
10 were sending out. The note was addressed to the Secretary of State of California
11 and requested that the UCC documents be filed and a copy sent to the above
address, which was "Rodney Butler, c/o 1623 Darwin Street, Seaside, CA 93955."
Inmates are required to directly correspond with individuals in the community
using their inmate institutional address.

12 Based on the greater weight of the evidence you possessed the UCC forms you
13 had placed in the envelope on 5-1-2012, the DHO finds you had committed the
prohibited act of Code 305.

14 Based on the greater weight of the evidence you utilized a third party address in
15 the community to send and receive mail for you, the DHO finds you committed
the prohibited act of Code 296.

16 Based on the greater weight of the evidence you utilized the phone to facilitate
17 and further the use of a third party to forward your US mail (a violation of Code
18 296), the DHO finds you committed Code 297, by using the phone to further a
high severity act of misconduct.

19 Doc. 15-1 at 31-32.

20 For violation of code 297, the DHO sanctioned Petitioner with three months' loss of telephone and
21 disallowed 27 days of good conduct time; for code 296, three months' loss of email and
22 disallowance of 27 days of good conduct time; for code 305, thirty days' disciplinary segregation
23 and three months' loss of commissary items.
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25 On January 6, 2014, Petitioner filed the petition for writ of habeas corpus in this Court. The
26 parties do not dispute venue, personal service, subject matter jurisdiction, or exhaustion of
27 remedies.
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1 The Court finds Petitioner's vague and unsupported claim to lack credibility. Broad,
2 conclusive claims of unconstitutionality are insufficient to state a cognizable claim. *Jones v.*
3 *Gomez*, 66 F.3d 199, 204-05 (9th Cir. 1995). The Court declines to grant the petition on a single
4 vague and unsupported ground.

5 **IV. Certificate of Appealability**

6 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district
7 court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v. Cockrell*,
8 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a certificate
9 of appealability is 28 U.S.C. § 2253, which provides:
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11 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
12 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

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

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

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

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

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

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

25 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
26 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
27 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed
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1 further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Although the
2 petitioner is not required to prove the merits of his case, he must demonstrate "something more than
3 the absence of frivolity or the existence of mere good faith on his . . . part." *Miller-El*, 537 U.S. at
4 338.

5 In the present case, the Court finds that reasonable jurists would not find the Court's
6 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
7 deserving of encouragement to proceed further. Petitioner has not made the required substantial
8 showing of the denial of a constitutional right. Accordingly, the Court declines to issue a certificate
9 of appealability.
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11 **IV. Conclusion and Order**

12 The Court hereby ORDERS that:

- 13 1. The petition for writ of habeas corpus is DENIED;
14 2. The Clerk of Court is DIRECTED to enter judgment for Respondent; and
15 3. The Court DECLINES to issue a certificate of appealability.
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18 IT IS SO ORDERED.

19 Dated: June 26, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE