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

FRANCISCO GARCIA HERRERA,
Petitioner,
v.
MICHAEL L. BENOVA,
Respondent.

Case No. 1:14-cv-01142-BAM-HC
ORDER GRANTING RESPONDENT'S MOTION
TO DISMISS THE PETITION (DOC. 14)
ORDER DISMISSING THE PETITION FOR
WRIT OF HABEAS CORPUS AS MOOT
(DOC. 1), DISMISSING PETITIONER'S
MOTION TO ANSWER AS MOOT (DOC. 13),
AND DIRECTING THE CLERK TO CLOSE
THE ACTION

Petitioner is a federal prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), the parties have 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 their consent in writings signed by the parties or their representatives and filed by Petitioner on July 31, 2014, and on behalf of Respondent on September 29, 2014. Petitioner filed opposition to the motion, styled as a reply, on November 24, 2014. Although the fourteen-day period for filing a reply has passed, no reply has been filed.

1 I. Background

2 Petitioner, an inmate of the Taft Correctional Institution
3 (TCI), challenges the forfeiture of forty-one days of good conduct
4 time credit that Petitioner suffered as a result of prison
5 disciplinary findings initially made at TCI in May 2014. An
6 employee of the private company that managed TCI found that on or
7 about April 15, 2014, Petitioner engaged in the prohibited conduct
8 of possession of a manufactured weapon. (Motn., doc. 14-1 at 13-
9 15.) Petitioner challenges the finding and seeks invalidation of
10 the sanction. Petitioner raises the following claims in the
11 petition: 1) because the disciplinary hearing officer (DHO) was not
12 an employee of the Federal Bureau of Prisons (BOP) and thus lacked
13 the authority to conduct the disciplinary hearing and make findings
14 resulting in punishment, including disallowance of good time credit,
15 Petitioner suffered a violation of his right to due process of law;
16 and 2) because the DHO was not an employee of the BOP but rather was
17 an employee of a private entity with a financial interest in the
18 disallowance of good time credits, Petitioner's due process right to
19 an independent and impartial decision maker at the disciplinary
20 hearing was violated. (Pet., doc. 1 at 3-9.)

21 Respondent moves for dismissal of the petition as moot because
22 the disciplinary charges were reheard via teleconference on August
23 26, 2014, by a certified disciplinary hearing officer of the BOP.
24 At the rehearing, Petitioner admitted the violation. The BOP DHO
25 found that Petitioner had committed the prohibited misconduct, and
26 he assessed the same disallowance of good conduct time credit
27 (forty-one days) as well as three months of disciplinary
28 segregation. (Decl., doc. 14-1 at 2-3; doc. 14-1 at 17-20.)

1 II. Mootness

2 Federal courts lack jurisdiction to decide cases that are moot
3 because the courts' constitutional authority extends to only actual
4 cases or controversies. Iron Arrow Honor Society v. Heckler, 464
5 U.S. 67, 70-71 (1983). Article III requires a case or controversy
6 in which a litigant has a personal stake in the outcome of the suit
7 throughout all stages of federal judicial proceedings and has
8 suffered some actual injury that can be redressed by a favorable
9 judicial decision. Id. A petition for writ of habeas corpus
10 becomes moot when it no longer presents a case or controversy under
11 Article III, § 2 of the Constitution. Wilson v. Terhune, 319 F.3d
12 477, 479 (9th Cir. 2003). A petition for writ of habeas corpus is
13 moot where a petitioner's claim for relief cannot be redressed by a
14 favorable decision of the court issuing a writ of habeas corpus.
15 Burnett v. Lampert, 432 F.3d 996, 1000-01 (9th Cir. 2005) (quoting
16 Spencer v. Kemna, 523 U.S. 1, 7 (1998)). Mootness is
17 jurisdictional. See, Cole v. Oroville Union High School District,
18 228 F.3d 1092, 1098-99 (9th Cir. 2000). Thus, a moot petition must
19 be dismissed because nothing remains before the Court to be
20 remedied. Spencer v. Kemna, 523 U.S. 1, 18.

21 Here, documentation submitted by Respondent in support of the
22 motion to dismiss demonstrates that the claims initially alleged by
23 Petitioner are no longer in controversy. The charges were reheard
24 by an officer who had the precise qualifications that Petitioner had
25 alleged were required by principles of due process of law and the
26 pertinent regulations. It is undisputed that the findings and
27 sanctions that constituted the object of Petitioner's challenges in
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1 the petition have now been superseded by the findings and sanctions
2 of the certified BOP DHO.

3 When, because of intervening events, a court cannot give any
4 effectual relief in favor of the petitioner, the proceeding should
5 be dismissed as moot. Calderon v. Moore, 518 U.S. 149, 150 (1996).
6 In the present case, it appears that the only relief that Petitioner
7 sought was invalidation of the findings and associated sanctions.
8 It has been demonstrated that the rehearing of the incident report
9 by an indisputably qualified DHO has effectuated the relief sought
10 by Petitioner. Thus, it is no longer possible for this Court to
11 issue a decision redressing the injury.

12 Petitioner argues that under some state decisional law,
13 possessing a plastic knife that is as long as the one he was found
14 to have possessed is not a dangerous weapon. However, this
15 authority does not determine the validity of discipline in a federal
16 prison.

17 Petitioner argues that because the hearing was required to be
18 held within twenty-four hours, the hearing was too late, and
19 Petitioner thus remains entitled to relief. Due Process entitles
20 Petitioner to a hearing after receipt of advance written notice of
21 the claimed violation; he is not entitled to a hearing within
22 twenty-four hours. See Wolff v. McDonnell, 418 U.S. 539, 563-64
23 (1974).

24 However, even if Petitioner is objecting more generally to the
25 delay between the initial hearing and the rehearing, Petitioner has
26 not shown any prejudice from the delay. At the rehearing,
27 Petitioner admitted that he committed the violation. (Doc. 14-1 at
28 17-20.) It appears from the documentation attached to the motion

1 that Petitioner received all the procedural due process required by
2 Wolff v. McDonnell, 418 U.S. 539 (1974). Procedural due process of
3 law requires that where the state has made good time subject to
4 forfeiture only for serious misbehavior, then prisoners subject to a
5 loss of good-time credits must be given advance written notice of
6 the claimed violation, a right to call witnesses and present
7 documentary evidence where it would not be unduly hazardous to
8 institutional safety or correctional goals, and a written statement
9 of the finder of fact as to the evidence relied upon and the reasons
10 for disciplinary action taken. Wolff v. McDonnell, 418 U.S. at 563-
11 64. Further, if the inmate is illiterate, or the issue so complex
12 that it is unlikely that the inmate will be able to collect and
13 present the evidence necessary for an adequate comprehension of the
14 case, the inmate should have access to help from staff or a
15 sufficiently competent inmate designated by the staff. However,
16 confrontation, cross-examination, and counsel are not required.
17 Wolff, 418 U.S. at 568-70. Where good-time credits are a protected
18 liberty interest, the decision to revoke credits must also be
19 supported by some evidence in the record. Superintendent v. Hill,
20 472 U.S. 445, 454 (1985).

21 Here, Petitioner's admission of responsibility precludes any
22 claim of a lack of evidence to support the disciplinary finding.
23 Likewise, the documentation shows that Petitioner received adequate
24 notice; waived witnesses, staff representation, and presentation of
25 evidence; and received a written statement of the decision. (Doc.
26 14-1 at 17-20.) In light of these circumstances, the Court
27 concludes that Petitioner has not suffered any prejudice from either
28 participation of non-BOP staffers in the earlier stages of the

1 disciplinary process or any delay experienced in the course of the
2 rehearing process.

3 Generally, a failure to meet a prison guideline regarding a
4 disciplinary hearing would not alone constitute a denial of due
5 process. See Bostic v. Carlson, 884 F.2d 1267, 1270 (9th Cir.
6 1989). In the absence of controlling authority, the Court notes
7 that several courts have concluded that to establish a denial of due
8 process of law, prejudice is generally required. See Brecht v.
9 Abrahamson, 507 U.S. 619, 637 (1993) (proceeding pursuant to 28
10 U.S.C. § 2254); see also Tien v. Sisto, Civ. No. 2:07 cv-02436-VAP
11 (HC), 2010 WL 1236308, at *4 (E.D.Cal. Mar. 26, 2010) (recognizing
12 that while neither the United States Supreme Court nor the Ninth
13 Circuit Court of Appeals has spoken on the issue, numerous federal
14 Courts of Appeals, as well as courts in this district, have held
15 that a prisoner must show prejudice to state a habeas claim based on
16 an alleged due process violation in a disciplinary proceeding, and
17 citing Pilgrim v. Luther, 571 F.3d 201, 206 (2d Cir. 2009); Howard
18 v. United States Bureau of Prisons, 487 F.3d 808, 813 (10th Cir.
19 2007); Piggie v. Cotton, 342 F.3d 660, 666 (7th Cir. 2003); Elkin v.
20 Fauver, 969 F.2d 48, 53 (3d Cir. 1992); Poon v. Carey, no. Civ. S 05
21 0801 JAM EFB P, 2008 WL 5381964, *5 (E.D.Cal. Dec. 22, 2008); and
22 Gonzalez v. Clark, no. 1:07 CV 0220 AWI JMD HC, 2008 WL 4601495, at
23 *4 (E.D.Cal. Oct. 15, 2008)); see also Smith v. United States Parole
24 Commission, 875 F.2d 1361, 1368-69 (9th Cir. 1989) (holding in a §
25 2241 proceeding that a prisoner, who challenged the government's
26 delayed compliance with a procedural regulation that required
27 counsel to be appointed before a record review in parole revocation
28 proceedings, was required to demonstrate prejudice to be entitled to

1 habeas relief); Standlee v. Rhay, 557 F.2d 1303, 1307-08 (9th Cir.
2 1977) (stating that burden is on a parolee to demonstrate that
3 failure to permit a witness's live testimony at a revocation hearing
4 was so prejudicial as to violate due process).

5 In summary, the claims in the petition before the Court are no
6 longer subject to redress by the Court. Further, the factual
7 accuracy of the findings on rehearing is undisputed, the record
8 establishes that Petitioner received procedural due process of law,
9 and there is no indication that Petitioner suffered any legally
10 cognizable prejudice. Petitioner has not asserted any factual or
11 legal basis that would preclude a finding of mootness.

12 The Court thus concludes that the matter is moot because the
13 Court may no longer grant any effective relief. See, Badea v. Cox,
14 931 F.2d 573, 574 (9th Cir. 1991) (holding that a habeas claim was
15 moot where a former inmate sought placement in a community treatment
16 center but was subsequently released on parole and no longer sought
17 such a transfer); Kittel v. Thomas, 620 F.3d 949 (9th Cir. 2010)
18 (dismissing as moot a petition seeking early release where the
19 petitioner was released and where there was no live, justiciable
20 question on which the parties disagreed).

21 Accordingly, the motion to dismiss the petition as moot will be
22 granted.

23 III. Dismissal of Motion

24 On October 23, 2014, Petitioner filed a motion referring to an
25 answer but setting forth authority in support of the petition. To
26 the extent that Petitioner sought relief from the Court in the
27 motion, the motion will be dismissed as moot.

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IV. Disposition

Accordingly, it is ORDERED that:

- 1 Respondent's motion to dismiss the petition is GRANTED; and
 - 2) The petition for writ of habeas corpus is DISMISSED as moot;
- and
- 3) Petitioner's motion to answer is DISMISSED as moot; and
 - 4) The Clerk is DIRECTED to close the action.

IT IS SO ORDERED.

Dated: December 11, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE