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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALONZO MCKINNEY,
Petitioner,
v.
HEDGPETH,
Respondent.

Case No. 1:15-cv-00059-LJO-EPG-HC
FINDINGS AND RECOMMENDATION
REGARDING RESPONDENT’S MOTION
TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS
(ECF No. 21)

In his petition for writ of habeas corpus, Petitioner Alonzo McKinney claims that he did not receive due process during a disciplinary proceeding concerning his possession of a weapon. For the reasons discussed below, this Court finds that the recent Ninth Circuit case of Nettles v. Santos, 788 F.3d 992 (9th Cir. 2015), controls. As in Nettles, the results of Petitioner’s disciplinary proceeding, even if affected by any lack of due process, would not “necessarily accelerate the future date of [Petitioner’s] release from custody,” because if he eventually qualifies for a parole hearing, the parole board may still deny parole on other grounds. Moreover, without knowing how long Petitioner will serve before the Board finds him eligible for parole, nor the length of his base term, the restoration of his credits would not necessarily affect the duration of his confinement. Accordingly, his claims are not cognizable under the federal habeas statute.

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1 **I.**

2 **BACKGROUND**

3 Petitioner is proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28
4 U.S.C. § 2254.

5 On November 24, 2014, Petitioner filed the instant federal habeas petition in the United
6 States District Court for the Northern District of California. (ECF No. 1). On January 9, 2015,
7 Magistrate Judge Laurel Beeler of the Northern District of California issued an order dismissing
8 Petitioner’s first claim concerning prison conditions and transferring the action to this Court for
9 consideration of the remaining two claims, which challenge the execution of Petitioner’s
10 sentence. (ECF No. 4).

11 Petitioner was convicted in 1997 in Los Angeles County Superior Court for assault with a
12 deadly weapon on a peace officer and sentenced to a term of imprisonment of 25 years to life.
13 Petitioner challenges his Rules Violation Report (“RVR”) Log FD-12-04-0031, dated September
14 9, 2011, for possession of inmate manufactured weapon. Petitioner alleges that he was denied
15 witnesses (including the reporting employee) and evidence at a disciplinary hearing on May 9,
16 2011, and at a disciplinary hearing on September 11, 2011. He also claims that an officer’s
17 signature was forged. The Court notes that Petitioner’s first disciplinary hearing in this matter
18 was actually on January 13, 2012. Petitioner then administratively appealed the guilty finding
19 and was granted a new hearing. On May 24, 2012, a second disciplinary hearing was held in this
20 matter and Petitioner was again found guilty. As a result, he lost 360 days of credits. The Court
21 will consider his petition as a challenge to the subsequent hearing.

22 Respondent has filed a motion to dismiss and Petitioner has filed an opposition to the
23 motion to dismiss. Respondent has not filed a reply to Petitioner’s opposition. Respondent
24 argues that the Court lacks jurisdiction because success on the instant habeas petition will not
25 necessarily accelerate Petitioner’s release and that the petition violates the statute of limitations.

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1 **II.**

2 **DISCUSSION**

3 **A. Lack of Jurisdiction**

4 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

5 If it plainly appears from the petition and any attached exhibits that
6 the petitioner is not entitled to relief in the district court, the judge
7 must dismiss the petition and direct the clerk to notify the
8 petitioner.

9 In general, the Supreme Court has explained that federal habeas jurisdiction only lies for
10 claims that go to “the validity of the fact or length of [prison] confinement.” See Preiser v.
11 Rodriguez, 411 U.S. 475, 490, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). The Ninth Circuit recently
12 discussed the contours of habeas jurisdiction concerning disciplinary hearings and resulting
13 credits in Nettles v. Grounds, 788 F.3d 922 (9th Cir. 2015). In Nettles, the Ninth Circuit ruled
14 that, pursuant to Skinner v. Switzer, 562 U.S. 521, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011),
15 habeas jurisdiction extends to claims involving prison disciplinary proceedings only if a
16 petitioner's success will “necessarily spell speedier release,” including “termination of custody,
17 acceleration of the future date of release from custody, or reduction of the level of custody.”
18 Nettles, 788 F.3d at 1001. Applying the Skinner standard, the Ninth Circuit held that the district
19 court in that case lacked jurisdiction over the discipline-related claim of a California inmate
20 serving an indeterminate life sentence, who had not yet been found suitable for parole. Id. at
21 1003-1004.

22 Significantly, the Ninth Circuit held that the restoration of time credits would not
23 necessarily affect the duration of the prisoner's confinement because he had not yet been found
24 suitable for parole and it was unknown what his term would be if he was at some future date
25 found suitable for parole. Id. at 1004. The Ninth Circuit also rejected the argument that habeas
26 jurisdiction existed because the expungement of the rule violation report would remove
27 “roadblocks to parole” suitability. Id. at 1003. The Ninth Circuit held that although the rule
28 violation report “will likely have some effect on the Board's consideration, there is no basis for
concluding that the expungement of this report from the record will ‘necessarily spell speedier

1 release” or reduce his level of custody. Nettles, 788 F.3d at 1003. Accordingly, the petitioner's
2 claim was not cognizable in habeas. Id. at 1004.

3 Here, Petitioner has not yet reached his minimum parole eligibility date (“MEPD”),
4 which is March 7, 2021. (ECF No. 21-1 at 2).¹ Additionally, while Petitioner was serving his
5 indeterminate sentence, he was sentenced to a new two-year determinate sentence for an in-
6 prison crime, which he will not start serving until he is granted parole for his indeterminate
7 sentence. See In re Tate, 135 Cal.App.4th 756, 764-65 (2006). Petitioner is unable to earn
8 credits toward his two-year determinate sentence while he is still serving his indeterminate
9 sentence, because the sentences are independent. Id.

10 It is true that the challenged disciplinary findings *could* affect the Parole Board’s future
11 assessment of Petitioner’s suitability for parole, and, if he is ever found suitable for parole, the
12 lost credits *could* affect the calculation of his release date. Nevertheless, it is not the case that an
13 expungement of the disciplinary findings would *necessarily* spell speedier release. For example,
14 Petitioner may never be found eligible for parole based on other grounds. Moreover, without
15 knowing how long Petitioner will serve before the Board finds him eligible for parole, if ever,
16 nor the length of his base term, it is uncertain whether the restoration of his credits would affect
17 the duration of his confinement. Thus, expungement of the challenged disciplinary decision and
18 restoration of any good time credits lost would not necessarily accelerate Petitioner’s release
19 from custody or reduce his level of custody. Under these circumstances, the effect of
20 expungement or credit restoration on the duration of confinement is “too attenuated” to support
21 habeas jurisdiction. See Nettles, 788 F.3d at 1003.²

22 Petitioner also alleges that a Secured Housing Unit (“SHU”) term was imposed as part of
23 his discipline. In Nettles, the Ninth Circuit also held that habeas jurisdiction exists for a prisoner
24 who seeks release from SHU because “success on his claim would result in his immediate
25 release from the SHU to the general prison population.” See Nettles, 788 F.3d at 1004-1006.

26 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

27 ² Note that, while Respondent claims that “This Court found that McKinney sufficiently alleged that the length of
28 his confinement was affected,” ECF No. 21 at 2, in an earlier order, this reading is incorrect. In the Court’s order to
show cause, the Court was merely summarizing Petitioner’s allegations – not commenting on their sufficiency. See
ECF No. 12.

1 Here, in contrast, Petitioner is no longer in the SHU. Instead, any SHU term to which Petitioner
2 was subjected to as a result of the disciplinary decision at issue here ended prior to June 2014,
3 when Petitioner’s work group was changed to “A1-Full time Assignment,” and thus, Petitioner
4 was not in the SHU even before this petition was filed. (ECF No. 21-1 at 3). Accordingly, the
5 petition must be dismissed for lack of jurisdiction.

6 **B. Statute of Limitations**

7 Respondent also argues that the petition should be dismissed because Petitioner filed it
8 after the one-year statute of limitations had lapsed. In response, Petitioner argues that statutory
9 and equitable tolling apply. He also claims that an impediment affected the commencement of
10 the statute of limitations.

11 As the Court has already determined that the petition must be dismissed because of a lack
12 of jurisdiction, the Court need not determine whether the petition would be barred by the statute
13 of limitations.

14 **III.**

15 **RECOMMENDATION**

16 Accordingly, the Court HEREBY RECOMMENDS that:

- 17 1. The petition for writ of habeas corpus be DISMISSED for lack of jurisdiction;
- 18 2. Respondent’s motion to dismiss (ECF No. 21) be GRANTED; and
- 19 3. The Clerk of the Court be DIRECTED to close the case.

20 This Findings and Recommendation is submitted to the assigned United States District
21 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
22 Rules of Practice for the United States District Court, Eastern District of California. Within
23 thirty (30) days after service of the Findings and Recommendation, any party may file written
24 objections with the Court and serve a copy on all parties. Such a document should be captioned
25 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the objections
26 shall be served and filed within fourteen (14) days after service of the objections. The assigned
27 United States District Court Judge will then review the Magistrate Judge’s ruling pursuant to 28
28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified

1 time may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
2 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: October 20, 2015

/s/ Erica P. Grosjean
UNITED STATES MAGISTRATE JUDGE