

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 WADE KNIGHT,

12 Petitioner,

13 v.

14 ANDRE MATEVOUSIAN,

15 Respondent.
16

Case No. 1:15-cv-00340-AWI-EPG-HC

ORDER TO EXPAND RECORD

ORDER SETTING BRIEFING SCHEDULE

17 Petitioner Wade Knight is a federal prisoner proceeding *pro se* with a petition for writ of
18 habeas corpus pursuant to 28 U.S.C. § 2241. In his petition, Petitioner challenges a prison
19 disciplinary proceeding on due process and abuse of authority grounds.

20 **I.**

21 **BACKGROUND**

22 Petitioner currently is in the custody of the Federal Bureau of Prisons (“BOP”) at the
23 United States Penitentiary in Atwater, California, serving a 235-month imprisonment term for
24 conspiracy to interfere with interstate commerce by robbery. According to an incident report
25 generated by BOP, on February 5, 2014, Officer J. Mendoza observed four inmates, including
26 Petitioner, standing over the victim inmate and punching him with closed fists in the upper torso
27 and facial area. (ECF No. 20-4 at 2; ECF No. 20-7 at 2).¹ Officers responded to the scene,

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

1 Officer Mendoza directed all inmates to “get down,” and staff directed the inmates to “stop
2 fighting.” The inmates did not comply with the orders, and staff discharged oleoresin capsicum.
3 Thereafter, the inmates were put in hand restraints. (Id.)

4 On February 5, 2014, Petitioner was charged with assaulting any person (with serious
5 injury) in Incident Report No. 2545590. (ECF No. 20-4). After Lieutenant C. Scarbrough
6 completed investigation of the charge, the incident report was forwarded to the Unit Discipline
7 Committee (“UDC”) for further action. (ECF No. 20 at 2 ¶ 10). On February 9, 2014, the UDC
8 held a hearing and determined there was sufficient basis to refer the matter to the Discipline
9 Hearing Officer (“DHO”) for disposition. (Id. at 2 ¶ 11). Thereafter, BOP staff determined that
10 the victim inmate suffered less serious injuries than initially thought and directed a rewrite of the
11 incident report. (Id. at 3 ¶ 13).

12 Accordingly, on March 7, 2014, Petitioner was charged with assaulting any person
13 (without serious injury) in the rewritten Incident Report No. 2545590. (ECF No. 20-7). After
14 Lieutenant S. Helling completed reinvestigation of the charge, the rewritten incident report was
15 forwarded to the UDC for further action. (ECF No. 20 at 3 ¶ 15). On April 25, 2014, the UDC
16 held a hearing and determined there was sufficient basis to refer the matter to the DHO for
17 disposition. (Id. at 3 ¶ 16).

18 On May 8, 2014, the DHO held a hearing. (ECF No. 20-10). According to the Discipline
19 Hearing Officer Report (“DHO Report”), Petitioner pleaded not guilty and stated, “I was not
20 fighting.” (Id. at 2). Petitioner was assisted by staff representative R. Villapudua, and Inmates
21 Grinnage and Ritchie appeared as witnesses. The DHO found that the act was committed as
22 charged. (Id. at 3). Petitioner was assessed a sanction of 27 days of disallowed good conduct
23 time, 30 days of disciplinary segregation, 180 days loss of phone privilege, and 180 days loss of
24 email privilege. (Id. at 4).

25 After administratively appealing the decision, Petitioner filed the instant federal petition
26 for writ of habeas corpus on March 4, 2015. (ECF No. 1). Respondent has filed an answer to the
27 petition. (ECF No. 19).

28 ///

1 **II.**

2 **DISCUSSION**

3 Prisoners cannot be entirely deprived of their constitutional rights, but their rights may be
4 diminished by the needs and objectives of the institutional environment. Wolff v. McDonnell,
5 418 U.S. 539, 555 (1974). Prison disciplinary proceedings are not part of a criminal prosecution,
6 so a prisoner is not afforded the full panoply of rights in such proceedings. Id. at 556. Thus, a
7 prisoner’s due process rights are moderated by the “legitimate institutional needs” of a prison.
8 Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989) (citing Superintendent v. Hill, 472 U.S.
9 445, 454–55 (1984)). When a prison disciplinary proceeding may result in the loss of good time
10 credits, due process requires that the prisoner receive: (1) advance written notice of the charges
11 at least twenty-four hours before a disciplinary hearing; (2) an opportunity, when consistent with
12 institutional safety and correctional goals, to call witnesses and present documentary evidence in
13 his defense; and (3) a written statement by the fact-finder of the evidence relied on and the
14 reasons for the disciplinary action. See Hill, 472 U.S. at 454; Wolff, 418 U.S. at 563–67.

15 In pertinent part, Petitioner contends that the DHO abused his authority by speaking with
16 Inmates Grinnage and Ritchie, witnesses requested by Petitioner, only after the DHO already
17 found Petitioner guilty and imposed sanctions. (ECF No. 1 at 17). Petitioner has submitted an
18 affidavit by Inmate Grinnage in support of this claim. (Id. at 29). In the answer, Respondent
19 argues that Petitioner’s assertion is completely unsubstantiated by the record. (ECF No. 19 at 9).
20 Box III(C) of the DHO Report provides that Inmates Grinnage and Ritchie were called as
21 witnesses and appeared at the hearing. (ECF No. 20-10 at 2). Based on the foregoing, the Court
22 finds that the question of whether the inmate witnesses appeared and testified at the disciplinary
23 hearing or whether they spoke with the DHO after he had already found Petitioner guilty and
24 imposed sanctions cannot be resolved on the record before the Court.

25 A court entertaining a federal habeas petition “may direct the parties to expand the record
26 by submitting additional materials relating to the petition.” Rule 7(a), Rules Governing Section

27 ///

28 ///

1 2254 Cases.² The types of materials that may be submitted include, but are not limited to, “letters
2 predating the filing of the petition, documents, exhibits, and answers under oath to written
3 interrogatories propounded by the judge,” and affidavits. Rule 7(b). If the court directs
4 expansion, then “the party against whom the additional materials are offered” must have an
5 opportunity to admit or deny their correctness. Rule 7(c).³

6 **III.**

7 **ORDER**

8 Accordingly, the Court HEREBY ORDERS:

- 9 1. Within **THIRTY (30) days** of the date of service of this order, Respondent SHALL FILE
10 a BRIEF and any ADDITIONAL MATERIALS to further develop the record with
11 respect to Petitioner’s claim that the DHO spoke with the inmate witnesses only after the
12 DHO had already found Petitioner guilty and imposed sanctions.
- 13 2. Within **THIRTY (30) days** of the date of service of Respondent’s Brief and Additional
14 Materials, Petitioner SHALL FILE a BRIEF and any ADDITIONAL MATERIALS to
15 further develop the record.

16 All briefs shall be filed without oral argument unless otherwise ordered by the Court.
17 Local Rule 230(1). Extensions of time will only be granted upon a showing of good cause. All
18 provisions of Local Rule 110 are applicable to this order.

19 IT IS SO ORDERED.

20
21 Dated: March 30, 2016

21 /s/ Eric P. Grogan
22 UNITED STATES MAGISTRATE JUDGE

23
24
25
26
27 ² The Rules Governing Section 2254 Cases may be applied to § 2241 habeas petitions. See Rule 1(b), Rules
Governing Section 2254 Cases.

28 ³ If the Court cannot resolve this factual inconsistency based on the materials provided, an evidentiary hearing may
be required.