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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD AVALOS,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

Case No. 1:15-cv-00500-BAM HC

ORDER DISMISSING PETITION
FOR FAILURE TO STATE A
COGNIZABLE FEDERAL CLAIM

(Docs. 1 and 2)

SCREENING ORDER

Petitioner, a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, asserts a single claim: that his constitutional right to due process was violated when prison officials illegally disciplined him for his cellmate's possession of manufactured alcohol (pruno). Because the petition fails to state a cognizable federal claim, the Court dismisses it.¹

I. Preliminary Screening

Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules

¹ Petitioner consented to the jurisdiction of the Magistrate Judge for all purposes. (Doc. 5.)

1 Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990). A petition
2 for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable
3 claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*, 440 F.2d 13, 14 (9th
4 Cir. 1971).

5 **II. Procedural and Factual Background**

6 At 7:00 a.m. on July 31, 2012, Correctional Officer A. Mercado detected a strong odor of
7 inmate manufactured alcohol (pruno) coming from the cell occupied by Petitioner and his cellmate
8 Rios. In a subsequent search of the cell, Officer Mercado discovered approximately 2 ½ gallons of
9 pruno in a plastic bag in a common area of responsibility of both inmates.
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11 At an institutional hearing on August 11, 2012, Rios pleaded guilty to the charge of a
12 Division C Offense of "Possession of Inmate Manufactured Alcohol (Pruno)." Rios stated, "It's all
13 me. It's all my fault." Doc. 1 at 56.

14 Later on August 11, 2012, Petitioner personally appeared at an institutional hearing and pled
15 not guilty to the charge of a Division C Offense of "Possession of Inmate Manufactured Alcohol
16 (Pruno)." At the hearing, Plaintiff partly admitted guilt: ". . . I knew that morning it was in the cell."
17 Doc. 1 at 50. The Senior Hearing Officer (SHO) found Petitioner guilty and assessed a credit
18 forfeiture of 120 days and loss of privileges.
19

20 Petitioner appealed the decision, contending (1) that he was misquoted and that he actually
21 stated that he knew that the pruno had been found in his cell when he returned from breakfast and (2)
22 that he was wrongly disciplined for the actions of his cellmate. Denying the appeal at the second
23 level, the Appeals Coordinator wrote:
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25 Mr. Avalos, a cell search was conducted of your assigned cell. Inmate
26 manufactured alcohol was found in your assigned cell. The making of alcohol
27 takes several days before it reaches the state as it was found in your cell. The
28 Officer could smell the odor of alcohol outside your cell with the door closed;
therefore it is hard to believe you had no knowledge of the alcohol with this
strong odor permeating from your cell. You are reminded that you will be held
responsible and accountable for your living area at all times. Your claims in this

1 appeal have been proven false and your guilty finding will not be changed.

2 Doc. 1 at 39.

3 On December 14, 2012, following review at the third level, the appeal was again denied. The

4 Appeals Examiner wrote:

5 The appellant claims that he did not possess the alcohol which was discovered in
6 his cell. The alcohol was found in a common area of the cell, possessed a strong
7 odor, was of large quantity, and the sergeant verified that it was alcohol. The
8 cellmate's claim of ownership does not eliminate the appellant's culpability in this
9 matter. The appellant had the ability to be proactive in his dissociation from the
10 situation. He did not choose to exercise this option, and must in light of the
11 evidence, share responsibility for the rule violation. The appellant asserts that he
12 is not responsible for the actions of his cell partner. The evidence presented by
13 the Reporting Employee leads a reasonable person to believe that appellant was
14 aware of the presence of the contraband in the cell and he gave his implied
15 consent to allow the alcohol into the cell.

12 Doc. 1 at 38.

13 The Appeals Examiner concurred in the finding that Petitioner was aware of the pruno and
14 exercised constructive control over it. He found no evidence to support Petitioner's contention that
15 the SHO misquoted Petitioner. He declined to address various issues and requests first presented at
16 the third level of appeal. Finally, the Appeals Examiner concluded that Petitioner was provided with
17 all necessary administrative protections throughout the hearing and appeals process and that the
18 evidence supported the findings and disposition.

19
20 Petitioner filed a petition for writ of habeas corpus in state court on February 19, 2013. On
21 March 21, 2013, the Fresno County Superior Court dismissed Petitioner's habeas corpus petition for
22 failure to state a prima facie case for relief. The Superior Court held that the requirements for
23 federal due process are satisfied if some evidence supports the prison disciplinary board's decision to
24 revoke good time credits. Evaluating the standard of review, said the court, does not require
25 examination of the record as a whole, independent assessment of the witnesses' credibility, or
26 weighing of the evidence. The California Court of Appeal for the Fifth Appellate District summarily
27 denied the petition on May 23, 2013. The Supreme Court of California summarily denied the
28

1 petition on February 18, 2015.

2 On April 1, 2015, Petitioner filed a timely § 2254 petition in this Court along with a motion
3 for judicial notice of *Brown v. Plata*, 131 S.Ct. 1910 (2011).

4 **III. Standard of Review**

5 Habeas corpus is neither a substitute for a direct appeal nor a device for federal review of the
6 merits of a guilty verdict rendered in state court. *Jackson v. Virginia*, 443 U.S. 307, 332 n. 5 (1979)
7 (Stevens, J., concurring). Habeas corpus relief is intended to address only "extreme malfunctions" in
8 state criminal justice proceedings. *Id.*

9
10 Because the petition was filed after April 24, 1996, the effective date of the Antiterrorism
11 and Effective Death Penalty Act of 1996 (AEDPA), the Court must apply its provisions. *Lindh v.*
12 *Murphy*, 521 U.S. 320, 327 (1997); *Jeffries v. Wood*, 114 F.3d 1484, 1499 (9th Cir. 1997), *overruled*
13 *on other grounds by Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012). Under AEDPA, a petitioner
14 can prevail only if he can show that the state court's adjudication of his claim:

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16 (1) resulted in a decision that was contrary to, or involved an unreasonable
17 application of, clearly established Federal law, as determined by the Supreme
18 Court of the United States; or

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20 (2) resulted in a decision that was based on an unreasonable determination of the
21 facts in light of the evidence presented in the State court proceeding.

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23 28 U.S.C. § 2254(d); *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003); *Williams v.*
24 *Taylor*, 529 U.S. 362, 413 (2000).

25
26 "By its terms, § 2254(d) bars relitigation of any claim 'adjudicated on the merits' in state court,
27 subject only to the exceptions set forth in §§ 2254(d)(1) and (d)(2)." *Harrington v. Richter*, 562 U.S.
28 86, 98 (2011).

29
30 As a threshold matter, a federal court must first determine what constitutes "clearly
31 established Federal law, as determined by the Supreme Court of the United States." *Lockyer*, 538
32 U.S. at 71. To do so, the Court must look to the holdings, as opposed to the dicta, of the Supreme
33 Court's decisions at the time of the relevant state-court decision. *Id.* The court must then consider

1 whether the state court's decision was "contrary to, or involved an unreasonable application of,
2 clearly established Federal law." *Id.* at 72. The state court need not have cited clearly established
3 Supreme Court precedent; it is sufficient that neither the reasoning nor the result of the state court
4 contradicts it. *Early v. Packer*, 537 U.S. 3, 8 (2002). The federal court must apply the presumption
5 that state courts know and follow the law. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002). The
6 petitioner has the burden of establishing that the decision of the state court is contrary to, or involved
7 an unreasonable application of, United States Supreme Court precedent. *Baylor v. Estelle*, 94 F.3d
8 1321, 1325 (9th Cir. 1996).

9
10 The AEDPA standard is difficult to satisfy since even a strong case for relief does not
11 demonstrate that the state court's determination was unreasonable. *Harrington*, 562 U.S. at 102. "A
12 federal habeas court may not issue the writ simply because the court concludes in its independent
13 judgment that the relevant state-court decision applied clearly established federal law erroneously or
14 incorrectly." *Lockyer*, 538 U.S. at 75-76. "A state court's determination that a claim lacks merit
15 precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the
16 state court's decision." *Harrington*, 562 U.S. at 101 (quoting *Yarborough v. Alvarado*, 541 U.S. 652,
17 664 (2004)). Put another way, a federal court may grant habeas relief only when the state court's
18 application of Supreme Court precedent was objectively unreasonable and no fair-minded jurist
19 could disagree that the state court's decision conflicted with Supreme Court's precedent. *Williams*,
20 529 U.S. at 411.

21 22 **IV. Alleged Violation of Due Process Rights**

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24 When the state has made good time subject to forfeiture only for serious misbehavior,
25 procedural due process of law requires inmates subject to the loss of conduct credits to be given
26 advance written notice of the claimed violation, a right to call witnesses and present documentary
27 evidence where it would not be unduly hazardous to institutional safety or correctional goals, and a
28 written statement of the finder of fact setting forth the evidence relied upon and the reasons for the

1 disciplinary action taken. *Wolff v. McDonnell*, 418 U.S. 539, 563-64 (1974). If the inmate is
2 illiterate, or if the issue is so complex that it is unlikely that the inmate will be able to collect and
3 present the evidence necessary for adequate comprehension of the case, the inmate should be given
4 access to help from staff or a sufficiently competent inmate designated by staff. Confrontation,
5 cross-examination, and counsel are not required. *Id.* at 568-70. As demonstrated by the
6 documentation appended to and incorporated into the petition, the institution hearing procedure
7 complied with the procedural due process requirements in all respects. In the ensuing state habeas
8 process, the California state courts properly applied the applicable federal standard for evaluating
9 Petitioner's allegation of due process violations. *See* Doc. 1 at 24-25.

11 When conduct credits are a protected liberty interest, some evidence in the record must
12 support the revocation decision. *Superintendent v. Hill*, 472 U.S. 445, 454 (1985). To determine
13 satisfaction of the standard, a court need not examine the entire record, independently assess
14 witnesses' credibility, or weigh the evidence. *Id.* at 455-56. The only relevant question is whether
15 any evidence in the record could support the disciplinary board's conclusion. *Id.*

17 Pointing to Rios's statement that the pruno and its production were solely his doing,
18 Petitioner contends that the institutional hearing personnel and the state courts erred in finding him
19 guilty and imposing punishment. The Court disagrees. The institutional and state decisions were
20 supported by evidence, even though that evidence was unfavorable to Petitioner. As the hearing
21 officer explained, Rios' claiming ownership and responsibility did not absolve Petitioner of
22 culpability when he had to have known of the presence of the pruno, the smell of which was so
23 intense that a correctional officer could smell it outside the closed cell, and the quantity of which (2
24 ½ gallons) was sufficient to be obvious in the cell's limited common area. Neither the institutional
25 hearing personnel nor the state courts erred in concluding that Petitioner had constructive possession
26 of the pruno, even if Rios prepared it and claimed ownership.

28 ///

1 **V. State Claim**

2 Apparently for the first time, Petitioner contends in his federal petition that the state courts
3 erred in failing to take judicial notice of *In re Ishmael Ali Muhammed* (Cal. Super. Ct. (Sacramento
4 Cty.) Dec. 16, 1991) (No. 105458). Alleged errors in the application of state law are not cognizable
5 in federal habeas corpus. *Souch v. Schaivo*, 289 F.3d 616, 623 (9th Cir. 2002). Accordingly, the
6 Court does not reach this issue.

7 **VI. Conditions of Confinement**

8 A federal petition for writ of habeas corpus concerns whether a petitioner is in custody in
9 violation of the Constitution. 28 U.S.C. § 2254(a). "Habeas corpus is the exclusive remedy for a
10 state prisoner who challenges the fact or duration of his confinement and seeks immediate or
11 speedier release, even though such a claim may come within the literal terms of § 1983." *Preiser v.*
12 *Rodriguez*, 411 U.S. 475, 488-89 (1973). Challenges to the conditions of prison life are properly
13 brought under 42 U.S.C. § 1983. *McCarthy v. Bronson*, 500 U.S. 136, 142 (1991). A plaintiff may
14 not seek both types of relief in a single action. *See Heck v. Humphrey*, 512 U.S. 477, 487-88 (1994);
15 *Preiser*, 411 U.S. at 498-99 n. 15; *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990); *Advisory*
16 *Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases*.

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19 Petitioner attempts to craft a conditions of confinement argument that the housing of two
20 prisoners in cells designed for single occupancy somehow acts as a constitutional bar to his being
21 found guilty of possession of contraband. He requests judicial notice of *Brown v. Plata*, 131 S.Ct.
22 1910 (2011). Despite his citation to the United States Supreme Court case, however, Petitioner
23 appends to the petition limited annotated excerpts of *Coleman v. Schwarzenegger*, 922 F.Supp.2d
24 882 (E.D. Cal. and N.D. Cal. 2009). The *Coleman/Plata* lines of cases are inapposite because they
25 were brought under 42 U.S.C. § 1983 and addressed conditions of confinement, particularly medical
26 (*Coleman*) and mental health (*Plata*) in California prisons. Accordingly, the Court denies
27
28 Petitioner's motion for judicial notice.

1 Further, to the extent that Petitioner intends to raise the double-celling of prisoners as a
2 condition of confinement, the Court would be required to dismiss that claim from the pending habeas
3 action.

4 As the Court understands the petition, however, Petitioner's intent is not to assert a conditions
5 of confinement claim, but to disarm the conclusion that he could be found guilty of possessing
6 contraband simply because he shared a cell with the inmate who created and possessed it. Petitioner
7 quotes, "In California, design capacity is based on one inmate per cell, single bunks in dormitories,
8 and no beds in space not designed for housing." *Coleman*, 922 F.Supp.2d at 910 (quoting
9 Corrections Independent Review Panel, Ex. P4 at 123). In context, the *Coleman* court discussed the
10 impact of prison overcrowding on the capacities of the prisons' medical and mental health facilities.
11 Petitioner, however, attempts to defeat the guilt finding for possessing inmate manufactured alcohol
12 (pruno) by arguing that he could not have been implicated in his cellmate's illicit activities if he had
13 been individually housed. Not only is his argument farfetched, but it also fails to acknowledge his
14 own complicity in illicit activities of which the institutional tribunal and state courts concluded he
15 had to have been aware.
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18 But in any event, the *Coleman* dicta regarding the design capacity of California prisons in
19 general did not grant inmates a federal right to be singly celled. Regardless of the merits of
20 Petitioner's creative argument, housing him in a cell with another prisoner was not contrary to, nor
21 did it involve, an unreasonable application of, clearly established Federal law. As a result, it is not a
22 cognizable claim in this habeas action.
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24 **V. Certificate Of Appealability Denied**

25 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district
26 court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v. Cockrell*,
27 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a certificate of
28 appealability is 28 U.S.C. § 2253, which provides:

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(a) In a habeas corpus proceeding or a proceeding under section 2255 before a 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.

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

- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
 - (B) the final order in a proceeding under section 2255.

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

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

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

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

CONCLUSION AND ORDER

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The Petition for Writ of Habeas Corpus fails to state a cognizable federal claim.

Accordingly, the Court hereby ORDERS that:

1. The Petition for Writ of Habeas Corpus is DISMISSED WITHOUT PREJUDICE.
2. The Clerk of Court is DIRECTED to enter judgment; and
3. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: June 5, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE