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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MYCHAL REED,
Petitioner,
v.
DANIEL PARAMO, Warden
Respondent.

Case No. 1:17-cv-01347-AWI-MJS (HC)
**FINDINGS AND RECOMMENDATIONS TO
GRANT RESPONDENT'S MOTION TO
DISMISS THE PETITION
(ECF NO. 12)
THIRTY (30) DAY OBJECTION DEADLINE**

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Respondent Daniel Paramo, Warden of R.J. Donovan Correctional Facility, is hereby substituted as the proper named respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure. Respondent is represented by Pamela B. Hooley of the Office of the California Attorney General.

I. Relevant Procedural History

Petitioner is currently in the custody of the California Department of Corrections and Rehabilitation pursuant to the 2010 judgment of the Superior Court of California, County of San Diego. (ECF No. 12-2 at 4.) He is serving a term of life without the possibility of parole on a murder conviction. (Id.) In this proceeding, he challenges

1 disciplinary proceedings that occurred while he was incarcerated at California State
2 Prison, Corcoran. (ECF No. 1.)

3 More specifically, on January 20, 2016, Petitioner was charged in a CDCR Form
4 115 Rules Violation Report with Behavior Which Could Lead to Violence. (ECF No. 12-2
5 at 9.) It was alleged that, on January 18, 2016, during a cell search, Petitioner
6 demanded that an officer return a bag that covered Petitioner's typewriter and, when the
7 officer did not comply, Petitioner followed him and called him a "fucken bitch." (Id.)

8 The RVR was adjudicated on February 18, 2016. (Id. at 10.) Petitioner pled not
9 guilty. (Id.) The hearing officer found Petitioner guilty of the charge but, in the interests of
10 justice, dismissed the formal RVR and reported the misconduct as a Custodial
11 Counseling Chrono on a CDCR Form 128A. Petitioner was counseled and reprimanded.
12 He was not assessed a loss of credits, nor was a term of disciplinary segregation
13 imposed.

14 Thereafter, Petitioner filed an administrative grievance, claiming that the RVR was
15 "phony" and written in retaliation for Petitioner's prior grievances. Additionally, he alleged
16 that he was denied an interpreter required under the ADA because he is hearing
17 impaired, and also was denied various other procedural and substantive due process
18 protections. (Id. at 14-18.) After exhausting his administrative remedies, he presented his
19 claims to the California state courts by way of writs of habeas corpus, proceeding
20 eventually to the California Supreme Court where his petition was summarily denied.
21 (ECF Nos. 12-1 through 12-4.)

22 On October 6, 2017, Petitioner filed the instant petition challenging his disciplinary
23 proceedings. (ECF No. 1.) On November 1, 2017, Respondent filed a motion to dismiss,
24 arguing that the Court lacks habeas jurisdiction over the petition. (ECF No. 12.) On
25 November 17, 2017, Petitioner filed an opposition. (ECF No. 13.) On November 20,
26 2017, Respondent filed a reply. (ECF No. 14.) The matter is submitted.

1 **II. Jurisdiction**

2 Relief by way of a writ of habeas corpus extends to a prisoner under a judgment
3 of a state court if the custody violates the Constitution, laws, or treaties of the United
4 States. 28 U.S.C. § 2254(a); 28 U.S.C. § 2241(c)(3); Williams v. Taylor, 529 U.S. 362,
5 375 n.7 (2000). However, federal courts lack habeas jurisdiction over claims for
6 constitutional violations that are not within the “core” of habeas corpus. Nettles v.
7 Grounds, 830 F.3d 922, 927 (9th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 645, 196
8 L. Ed. 2d 542 (2017). The core of habeas corpus includes only those claims that
9 challenge the fact or duration of the conviction or sentence. Id. at 934. “[W]hen a
10 prisoner's claim would not necessarily spell speedier release, that claim does not lie at
11 the core of habeas corpus[.]” Skinner v. Switzer. 562 U.S. 521, 535 n.13 (2011) (citation
12 and internal quotation marks omitted). Such claims must be brought, if at all, in a civil
13 rights complaint. Nettles, 830 F.3d at 934.

14 With respect to disciplinary proceedings, the Ninth Circuit has concluded that the
15 mere fact that a disciplinary decision may be considered as a factor in denying parole is
16 insufficient to confer habeas jurisdiction on the court. Nettles, 830 F.3d at 934-35. Thus,
17 a prisoner serving an indeterminate sentence, who will not directly benefit from the
18 restoration of good time credits, may be foreclosed from seeking habeas relief in relation
19 to disciplinary proceedings. See id. at 928-29.

20 Here, Petitioner did not lose any credits in relation to the disciplinary proceeding.
21 Even if he had lost credits, he, like Nettles, would not directly benefit from the restoration
22 of lost good time credits due to the nature of his sentence. Because there is no relief the
23 Court could offer that would necessarily spell speedier release, the Court does not have
24 habeas jurisdiction over Petitioner’s claims. While Petitioner contends that the
25 disciplinary decision has affected the potential for him to receive clemency or a
26 commutation of his sentence (ECF No. 13.), the disciplinary decision is but one factor
27 that will be considered in determining whether to grant these requests. In other words,
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1 reversal of the disciplinary decision will not necessarily result in the grant of clemency or
2 a commutation of Petitioner's sentence. Cf. id. at 935; Cal Penal Code § 4800, et seq. In
3 this regard, his claim does not fall within the core of habeas corpus.

4 Based on the foregoing, the Court does not have habeas jurisdiction over the
5 petition and the claims must be brought, if at all, in a § 1983 civil rights action.

6 **III. Conversion to § 1983 Action**

7 In an appropriate case a habeas petition may be construed as a section 1983
8 complaint. Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407, 30 L. Ed. 2d 418
9 (1971). Although the Court may construe a habeas petition as a civil rights action, it is
10 not required to do so. Since the time when the Wilwording case was decided there have
11 been significant changes in the law. For instance, the filing fee for a habeas petition is
12 five dollars, and if leave to proceed in forma pauperis is granted, the fee is forgiven.
13 However, prisoners proceeding in forma pauperis in civil rights cases are required to pay
14 the \$350 filing fee by way of periodic deductions from the prisoner's trust account. See
15 28 U.S.C. 1915(b)(1). A prisoner who might be willing to file a habeas petition for which
16 he or she would not have to pay a filing fee might feel otherwise about a civil rights
17 complaint for which the \$350 fee would be deducted from income to his or her prisoner
18 account. Also, a civil rights complaint which is dismissed as malicious, frivolous, or for
19 failure to state a claim would count as a "strike" under 28 U.S.C. § 1915(g), which is not
20 true for habeas cases.

21 In view of these potential pitfalls for Petitioner if the petition were construed as a
22 civil rights complaint, the Court will recommend the case be dismissed without prejudice
23 to Petitioner presenting the claims in a civil rights complaint pursuant to 42 U.S.C.
24 § 1983, if he so chooses. Any such complaint will be assigned a separate civil number.

25 **IV. Conclusion and Recommendations**

26 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 27 1. Respondent's motion to dismiss be GRANTED, and

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2. The petition for writ of habeas corpus be dismissed without prejudice for lack of jurisdiction.

The findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty** (30) days after being served with the findings and recommendations, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served and filed within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: November 21, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE