

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHARLES AUSTIN PARKS, No. CIV S-06-2877-FCD-CMK-F

Petitioner,

VS.

ORDER

DAVID L. RUNNELS, et al.,

Respondents.

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States magistrate judge pursuant to Eastern District of California local rules.

20 On December 31, 2008, the Magistrate Judge filed findings and recommendations
21 herein which were served on the parties and which contained notice that any objections to the
22 findings and recommendations were to be filed within 20 days. Timely objections to the
23 findings and recommendations have been filed.

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1 Petitioner raises two due process claims arising from a prison disciplinary
2 proceeding. First, he claims he was denied a staff assistant. Second, he claims he was
3 improperly assessed a fine because he was never charged with destruction of state property. The
4 Magistrate Judge correctly concluded that the first claims should be denied because the charges
5 were not complex and petitioner admitted at the hearing that he was literate. See Wolff v.
6 McDonnell, 418 U.S. 539, 563-70 (1974). As to the second claim, the Magistrate Judge
7 recommended granting the petition because petitioner was never charged with destruction of
8 state property and, therefore, the fine was imposed in violation of procedural guarantees required
9 to satisfy due process. In their objections, respondents argue that relief is unavailable on this
10 claim. Respondents' objection regarding the second claim is well taken. Because imposition of
11 a fine does not implicate either the fact or duration of petitioner's custody, it is not cognizable in
12 a federal habeas corpus action and petitioner's remedy for the due process violation lies in a civil
13 rights action. See Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985). Petitioner's claim
14 regarding the fine will be denied without prejudice.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
16 304, this court has conducted a de novo review of this case. Having carefully reviewed the
17 entire file, the court finds the findings and recommendations to be supported by the record and
18 by proper analysis as to petitioner's first claim regarding denial of a staff assistant. The court
19 does not adopt the findings and recommendations as to petitioner's second claim regarding
20 imposition of a fine.

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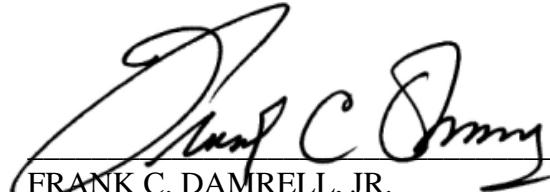
1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed May 25, 2007, are adopted in
3 part;

4 2. Petitioner's petition for a writ of habeas corpus (Doc. 1) is denied in its
5 entirety; and

6 3. The Clerk of the Court is directed to enter judgment and close this file.

7 DATED: January 23, 2009.



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE