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

JOHNNY S. TIEN,  
Petitioner,  
v.  
D.K. SISTO, Warden,  
Respondent.

Case No. 2:07-cv-02436-VAP  
(HC)

**[Petition filed on November  
13, 2007]**

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS FILED  
BY A STATE PRISONER**

**I. BACKGROUND**

Petitioner Johnny S. Tien is a state prisoner proceeding in pro se in a habeas corpus action filed pursuant to 28 U.S.C. § 2254. The petition was filed on November 13, 2007 and Respondent filed an Answer on February 8, 2008. On January 5, 2009, the action was transferred to this Court pursuant to an Order of Designation of Judge to Serve in Another District within the Ninth Circuit.

For the reasons stated below, the Court DENIES the Petition.

1 **A. Statement of Facts**

2 Petitioner was convicted of attempted murder and  
3 sentenced to a ten year term of imprisonment on February  
4 7, 2001. His petition does not challenge the propriety  
5 of his conviction or sentence, but rather a March 7, 2006  
6 disciplinary action taken by authorities at the  
7 California State Prison, Solano.

8  
9 On January 25, 2006, a cell occupied by Petitioner  
10 and another inmate was searched by a prison correctional  
11 officer. (Ans., Ex. 2 ("Rules Violation Report" or "CDC  
12 115") at 1.) The officer found several items hidden  
13 inside a Sony alarm clock radio engraved as belonging to  
14 Tien, including \$100 in currency, and 2 plastic "bundles"  
15 containing a green leafy substance. (Id.) A subsequent  
16 laboratory analysis determined that the substance was  
17 marijuana. (Id.)

18  
19 On January 26, 2006, Tien signed a form indicating  
20 that he understood he was being charged with the  
21 unauthorized possession of a controlled substance, and  
22 that he was refusing to accept the results of a field  
23 test, and thus a hearing would be scheduled after a  
24 laboratory analysis was completed. (Ans., Ex. 3.) On  
25 that same day, he also signed an acknowledgment that he  
26 had been warned of his Miranda rights, and that he did

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1 not wish to comment or answer any questions relating to  
2 the charges. (Ans., Ex. 4.)

3  
4 The records of the Department of Corrections indicate  
5 that Petitioner was given a copy of a "Rules Violations  
6 Report," a "Toxicology Report," and an "Incident Report"  
7 on February 27, 2006. (Ans., Ex. 2 at 1.) Petitioner  
8 contends, though, that the Toxicology Report and Incident  
9 Reports he was given related to a different incident,  
10 involving an inmate named "Hunyh," and were dated October  
11 2005. (Pet. at 3.) He has produced these Reports.  
12 (Pet., Ex. 2-D.)

13  
14 A hearing was held on March 5, 2006, at which  
15 Petitioner maintained that he had purchased the radio  
16 from another inmate and later had it engraved with his  
17 name, but had no knowledge that there was any money or  
18 drugs inside the radio. (Ans., Ex. 2 at 2.) The hearing  
19 officer found that the evidence presented substantiated  
20 the charge of possession of a controlled substance by a  
21 preponderance of the evidence. (Id.) In addition to the  
22 physical evidence and the toxicology report, the hearing  
23 officer found Petitioner's explanation of his lack of  
24 knowledge of the contents of the radio not credible, as  
25 it was "unlikely that another [inmate] would have sold  
26 him a radio for \$15.00 when there was [] \$100.00 and  
27 drugs in it." (Id.) As a penalty for the violation, the  
28

1 hearing officer sentenced Petitioner to a forfeiture of  
2 130 days of work credit and a short-term loss of certain  
3 visiting and yard privileges, and imposed certain  
4 substance abuse-related conditions. (Id. at 3.)

5  
6 A copy of an updated Rules Violation Report,  
7 reflecting the hearing officer's decision, was given to  
8 Petitioner on March 17, 2006. (Id. at 1, 2, 3.)

9 Petitioner claims it was at this point that he first  
10 discovered that the Incident Report provided to him on  
11 February 27, 2006, before the hearing, related to inmate  
12 Huynh, and not him. (Pet. at 4, Ex. 2-F.) Petitioner  
13 also discovered that the "log number for the [Hyunh]  
14 crime incident report" had been "deliberate[ly] scratched  
15 out." (Pet. at 5.) He also noted a typo on page 2 of the  
16 Rules Violation Report, which referred to "(20 plastic  
17 bindles" as opposed to "(2) plastic bindles," as  
18 referenced elsewhere in the report, as well as  
19 discrepancies in the weight of the marijuana seized.  
20 (Pet. at 5, Ans. Ex. 2 at 1, 2.)

21  
22 Petitioner sought a second level review, in which he  
23 raised the issue that he had been given the wrong  
24 Incident Report for the first time. (Pet. Ex. 2-F.) On  
25 April 17, 2006, the reviewer rejected Petitioner's  
26 request for review, noting:

27 The appellant made no mention of his alleged  
28 issuance of the wrong CDC Form 837,

1 Crime/Incident Report at his disciplinary  
2 hearing. The appellant's central file reflects  
3 the correct CDC Form 837, Crime/Incident Report  
4 was attached to the RVR filed in his central  
5 file. It is more likely, that the appellant  
6 obtained another's CDC Form 837, Crime/Incident  
7 Report while out on the yard mingling with the  
8 other inmates. It would have been incumbent  
9 upon the appellant to mention that he had the  
10 wrong CDC Form 837, Crime/Incident Report and  
11 was therefore not ready to commence with his  
12 hearing, but he did not make this claim.

13  
14 (Ans. Ex. 5; see also Pet. at 6.) Although the  
15 Second Level Appeal Response generally accurately  
16 describes Petitioner's offense as involving  
17 marijuana, at one point, the Response erroneously  
18 refers to heroin. (Pet., Ex. 2-G at 2.)

19  
20 Petitioner then filed a Director's Level Appeal,  
21 which was denied on July 24, 2006. (Ans., Ex. 5.)  
22 See Brodheim v. Cry, 584 F.3d 1262, 1264-65 (9th Cir.  
23 2009) (discussing administrative appeal process).  
24 The Director noted that Petitioner "failed to  
25 delineate any information that should have been  
26 available to him but was not provided to him prior to  
27 his disciplinary hearing," and that the evidence  
28 before the hearing officer was sufficient to  
substantiate the charges against Petitioner to a  
preponderance of the evidence. (Id.)

1 **B. Procedural History**

2 After exhausting his administrative appeals,  
3 Petitioner filed a petition for writ of habeas corpus  
4 in the California Superior Court for Solano County on  
5 January 9, 2007, alleging that he was provided the  
6 incorrect incident report and thus denied due  
7 process. That petition was denied by a detailed  
8 written order on January 24, 2007. (Ans., Ex. 7,  
9 ("Super. Ct. Op.").)

10

11 Petitioner subsequently filed a habeas petition  
12 in the California Court of Appeal, First Appellate  
13 District, which was summarily denied on February 21,  
14 2007. (Ans., Ex. 9.) On March 13, 2007, Petitioner  
15 filed a habeas petition in the California Supreme  
16 Court, which was summarily denied on April 18, 2007.  
17 (Ans. Ex. 10.)

18

19 **C. Petitioner's Claim**

20 Petitioner filed this petition on November 13,  
21 2007, and asserts that the disciplinary action taken  
22 against him violated his due process rights under the  
23 United States Constitution because he was provided  
24 with the incorrect Incident Report and Toxicology  
25 Report prior to his hearing.

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1 **II. LEGAL STANDARD**

2 The Antiterrorism and Effective Death Penalty  
3 Act of 1996 ("AEDPA") governs the Court's review of  
4 this Petition, as the Petition was filed after  
5 AEDPA's effective date. Under 28 U.S.C. § 2254(a),  
6 "a district court shall entertain an application for  
7 a writ of habeas corpus in behalf of a person in  
8 custody pursuant to the judgment of a State court  
9 only on the ground that he is in custody in violation  
10 of the Constitution or laws or treaties of the United  
11 States."

12  
13 When considering a properly exhausted claim  
14 under AEDPA, a federal court must defer to a state  
15 court's holding unless it "'was contrary to, or  
16 involved an unreasonable application of, clearly  
17 established Federal law, as determined by the Supreme  
18 Court of the United States,' or if the state court  
19 decision 'was based on an unreasonable determination  
20 of the facts in light of the evidence presented in  
21 the State court proceeding.'" Smith v. Curry, 580  
22 F.3d 1071, 1079 (9th Cir. 2009), quoting 28 U.S.C. §§  
23 2254(d)(1)-(2).

24  
25 "Clearly established Federal law" is defined as  
26 "the governing legal principle or principles set  
27 forth by the Supreme Court at the time the state  
28

1 court renders its decision." Curry, quoting Lockyer  
2 v. Andrade, 538 U.S. 63, 71-72 (2003). "[I]t is not  
3 'an unreasonable application of clearly established  
4 Federal law' for a state court to decline to apply a  
5 specific legal rule that has not been squarely  
6 established by [the Supreme] Court." Knowles v.  
7 Mirzayance, --- U.S. ---, 129 S. Ct. 1411, 1419  
8 (2009). However, "the Supreme Court need not have  
9 addressed an identical fact pattern to qualify as  
10 clearly established law, as 'even a general standard  
11 may be applied in an unreasonable manner.'" Jones v.  
12 Ryan, 583 F.3d 626, 635 (9th Cir. 2009), quoting  
13 Panetti v. Quarterman, 551 U.S. 930, 953 (2007).

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### III. DISCUSSION

The Supreme Court has held that inmates are entitled to procedural due process protections in disciplinary hearings that could result in the forfeiture of an inmate's good-time credits. Wolff v. McDonnell, 418 U.S. 539 (1974), discussed in Neal v. Shimoda, 131 F.3d 818, 830 (9th Cir. 1997). These minimum requirements include "advance written notice of the claimed violation and a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action taken." Wolff, 418 U.S. at 563, quoted in Neal, 131 F.3d at 830.



1 Applying this standard, the Superior Court  
2 rejected Petitioner's argument that the provision of  
3 an incorrect incident report violated due process on  
4 two alternate grounds.<sup>1</sup> The Superior Court noted  
5 that, even if as Petitioner alleges, he was given the  
6 incorrect "Incident Report" and "Rules Violation  
7 Report," it is undisputed that he was given the  
8 correct "Rules Violation Report" prior to his  
9 hearing. The Rules Violation Report contained the  
10 full statement of the correctional officer who  
11 searched Petitioner's cell and discovered the  
12 contraband, discussed the toxicology report  
13 identifying the discovered substance to be marijuana,  
14 and provided a chain of custody for all physical  
15 evidence. (Super. Ct. Op. at 2.)

16  
17 The purpose of the advance written noptice  
18 requirement is to " inform [a prisoner] of the  
19 charges and to enable him to marshal the facts and  
20 prepare a defense." Wolff, 418 U.S. 539 at 564.  
21 The detailed Rules Violation Report clearly achieved  
22 this goal here, as Petitioner directly addressed the  
23 charges against him and offered an explanation as to  
24 how he came into possession of the contraband.

25  
26  
27 <sup>1</sup> "When reviewing a state court's summary denial of a  
28 Richter v. Hickman, 578 F.3d 944, 951 (9th Cir. 2009).  
habeas petition, we "look through" the summary  
disposition to the last reasoned state court decision."

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Although the hearing officer found Petitioner's explanation not credible, that this explanation was offered shows that Petitioner was on notice of the charges against him. Thus, the Superior Court's determination that the Rules Violation Report independently met the Wolff standard was not an unreasonable application of clearly established law.

As an alternative basis for rejecting the petition, the Superior Court also determined that Petitioner failed to demonstrate any prejudice resulting from receiving the wrong report. (Super. Ct. Op. at 2, citing Chapman v. California, 386 U.S. 18, 24 (1967).) If Petitioner's version of events are to be believed, he did not even review the incident and toxicology reports he was given prior to the hearing. The Hyunh Reports clearly state the name "Hyunh" in over a dozen places, and each page is dated months prior to Petitioner's infraction. Even if Petitioner was denied access to the correct reports, though, there is no indication that the correct incident and toxicology reports were exculpatory in any way, nor that they contained materially different information from the Rules Violation Report. The Superior Court's determination

1 that the production of different documents would not  
2 "have led to a more favorable outcome at the  
3 disciplinary hearing," Super. Ct. Op. at 2-3, is thus  
4 not objectively unreasonable. While neither the  
5 United States Supreme Court or the Ninth Circuit  
6 Court of Appeals has spoken on the issue, numerous  
7 federal Courts of Appeals, as well as courts in this  
8 district, have held that a prisoner must show  
9 prejudice to state a habeas claim based on an alleged  
10 due process violation in a disciplinary proceeding.  
11 See, e.g., Pilgrim v. Luther, 571 F.3d 201, 206 (2d  
12 Cir. 2009); Howard v. United States Bureau of  
13 Prisons, 487 F.3d 808, 813 (10th Cir. 2007); Piggie  
14 v. Cotton, 342 F.3d 660, 666 (7th Cir. 2003); Elkin  
15 v. Fauver, 969 F.2d 48, 53 (3d Cir. 1992); Poon v.  
16 Carey, No. Civ. S-05-0801 JAM EFB P, 2008 WL 5381964,  
17 at \*5 (E.D. Cal. Dec. 22, 2008); Gonzalez v. Clark,  
18 No. 1:07-CV-0220 AWI JMD HC, 2008 WL 4601495, at \*4  
19 (E.D. Cal. Oct. 15, 2008). Thus the Superior Court's  
20 determination that Petitioner's claim fails due to  
21 his failure to demonstrate prejudice was not an  
22 unreasonable application of clearly-established  
23 federal law.

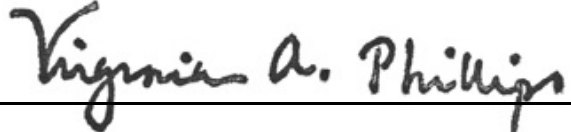
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**IV. CONCLUSION**

For the foregoing reasons, the Petition for Writ of Habeas Corpus is DENIED.

Dated: March 25, 2010



VIRGINIA A. PHILLIPS  
United States District Judge