

1 Petitioner maintains his innocence, that the contraband belonged
2 to his cellmate, and argues that because procedures used at his
3 disciplinary hearing violated his due process rights, the
4 conviction should be expunged and his good-time credits should be
5 restored. Presently before the Court is the Respondent's Motion
6 to Dismiss for failure to state a cognizable claim.

7 On August 31, 2011, the magistrate judge made findings
8 recommending that Respondent's Motion be denied. Those Findings
9 and Recommendations were served on all parties and contained
10 notice that any Objections to the Findings and Recommendations
11 were to be filed within fourteen (14) days. Respondent has filed
12 Objections to the Findings and Recommendations.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C)
14 and Local Rule 304, this Court has conducted a de novo review of
15 this case. Having carefully reviewed the entire file, the Court
16 rejects the magistrate judge's findings and recommendations that
17 Respondent's Motion to Dismiss should be denied. Under the
18 standards set forth in Bostic and Ramirez, discussed herein,
19 Petitioner has failed to state a cognizable claim for federal
20 habeas relief because he has not demonstrated that success on his
21 claim is likely to accelerate his eligibility for parole, or will
22 necessarily shorten his sentence. Bostic v. Carlson, 884 F.2d
23 1267 (9th Cir. 1989); Ramirez v. Galaza, 334 F.3d 850 (9th Cir.
24 2003). Therefore, Respondent's Motion to Dismiss should be
25 granted.

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1 **I. LEGAL STANDARD**

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3 This Court has jurisdiction to consider habeas petitions
4 where the petitioner is "in custody pursuant to the judgment of a
5 State court" and alleges that "he is in custody in violation of
6 the Constitution or laws or treaties of the United States."
7 28 U.S.C. § 2254(a). A writ of habeas corpus is not limited to
8 claims seeking immediate release from unlawful confinement, but
9 rather is also available to attack future confinement and obtain
10 future releases. See Preiser v. Rodriguez, 411 U.S. 475, 487, 93
11 S. Ct. 1827, 1835 (1973).

12 In Preiser, a prisoner sought restoration of so-called
13 "good-time credits." Id. Such credits are earned by prisoners
14 for good behavior, and potentially have the effect of shortening
15 a prisoner's duration of confinement. Preiser held that the
16 petitioner's habeas claims seeking restoration of good-time
17 credits were proper even though restoration of those credits
18 would merely shorten the length of confinement. The Supreme
19 Court reasoned that such claims were still "within the core of
20 habeas corpus in attacking the very duration of their physical
21 confinement." Preiser, 411 U.S. at 487-88.

22 Citing Preiser, the Ninth Circuit, in Bostic, Ramirez, and
23 Docken, addressed the boundaries of habeas jurisdiction where
24 prisoners allege violations that potentially impact the duration
25 of their confinement. Bostic v. Carlson, 884 F.2d 1267 (9th Cir.
26 1989); Ramirez v. Galaza, 334 F.3d 850 (9th Cir. 2003);
27 Docken v. Chase, 393 F.3d 1024 (9th Cir. 2004).

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1 In Bostic, the court reviewed a prisoner's claim seeking
2 restoration of good-time credits and expungement of his
3 disciplinary conviction. The court held that habeas corpus
4 jurisdiction exists when a petitioner seeks expungement of a
5 disciplinary finding from his record if expungement is likely to
6 accelerate the prisoner's eligibility for parole. Bostic,
7 884 F.2d 1267 at 1269 (emphasis added). The court, however,
8 summarily affirmed the district court's grant of dismissal for
9 failing to state a claim without addressing whether the
10 expungement of petitioner's disciplinary convictions would likely
11 accelerate his particular eligibility for parole.

12 In Ramirez, a prisoner filed a 42 U.S.C. § 1983 suit
13 alleging due process violations regarding his prison disciplinary
14 hearing and subsequent conviction. Ramirez, 334 F.3d at 853.
15 Among other claims, Petitioner sought expungement of his
16 disciplinary record. At issue was whether a § 1983 action or a
17 habeas petition was the proper course of action for a prisoner
18 making such a challenge. The court distinguished between those
19 two remedial avenues, stating that "[s]uits challenging the
20 validity of the prisoner's continued incarceration lie within
21 'the heart of habeas corpus,' whereas 'a § 1983 action is a
22 proper remedy for a state prisoner who is making a constitutional
23 challenge to the conditions of his prison life, but not to the
24 fact or length of his custody.'" Id. at 856 (citing Preiser,
25 411 U.S. at 498-99). Ramirez then held that "habeas jurisdiction
26 is absent, and a § 1983 action proper, where a successful
27 challenge to a prison condition will not necessarily shorten the
28 prisoner's sentence." Ramirez, 334 F.3d at 859 (emphasis added).

1 Under the facts of the case, the court stated petitioner's § 1983
2 suit was proper, because even "if [his challenge was] successful,
3 Ramirez will not necessarily shorten the length of his
4 confinement because there has been no showing by the State that
5 the expungement Ramirez seeks is likely to accelerate his
6 eligibility for parole." Id. at 859.

7 Finally, in Docken, a petitioner argued that a parole board
8 violated his constitutional rights when it changed the time
9 between his parole reviews from one to five years. Docken, 393
10 F.3d at 1026. The court stated that it was possible but not
11 certain that the change in frequency of review could impact the
12 duration of his confinement, especially given the petitioner's
13 designation as a "dangerous offender." Id. at 1031. In defining
14 its guiding principle, the court determined that to find a claim
15 "likely" to accelerate a prisoner's eligibility for parole under
16 Bostic, a "sufficient nexus" between the claim and the length of
17 imprisonment must be found "so as to implicate but not fall
18 squarely within, the core challenges identified by the Preiser
19 Court." Id.; Preiser, 411 U.S. at 487; Bostic, 884 F.2d at 1269.
20 In finding the petitioner's claim viable, the court adopted the
21 following rule:

22 We therefore hold that when prison inmates seek only
23 equitable relief in challenging aspects of their
24 parole review that, so long as they prevail, could
25 potentially affect the duration of their confinement,
such relief is available under the federal habeas
statute.

26 Docken, 393 F.3d at 1031 (emphasis contained within opinion).

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1 The Ninth Circuit, then, has created three arguably
2 different standards regarding the availability of federal habeas
3 review for expungement of disciplinary convictions. Under
4 Bostic, habeas jurisdiction is proper if expungement of a
5 disciplinary conviction is "likely to accelerate the prisoner's
6 eligibility for parole." Bostic, 884 F.2d at 1269. Under
7 Ramirez, habeas is absent "where a successful challenge to a
8 prison condition will not necessarily shorten the prisoner's
9 sentence." Ramirez, 334 F.3d at 859. Finally, under Docken,
10 habeas jurisdiction is proper when a prisoner challenges aspects
11 of his parole review that "could potentially affect the duration
12 of [his] confinement." Docken, 393 F.3d at 1031.

13 The holdings have led to inconsistency among district courts
14 addressing the existence of federal habeas jurisdiction in
15 prisoner claims seeking expungement of prison disciplinary
16 convictions.¹

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18 ¹ See Stuart v. Singh, 2011 WL 2746096 at *9 (E.D. Cal.
19 2011) (impact of disciplinary hearing too speculative because
20 petitioner "had not yet had a parole suitability hearing which
21 actually considered the impact of the subject disciplinary
22 conviction"); Aquiar v. Haviland, 2011 WL 2066762 at *2-3 (E.D.
23 Cal. 2011) (impact of disciplinary conviction too speculative
24 because at previous parole board hearing, eligibility was denied
25 for several reasons, and most strongly because of petitioner's
26 failure to accept responsibility); Norman v. Salazar, 2010 WL
27 2197541 at *2-3 (C.D. Cal. 2010) (previous parole hearing relied
28 on several factors, thus impact of disciplinary conviction upon
future hearings was too speculative); Santibanez v. Marshall,
2009 WL 1873044 at *7 (C.D. Cal. 2009) (finding impact of
disciplinary conviction too speculative; the court considered the
"minor nature" of the administrative discipline at issue for
expungement against the petitioner's three previous serious
disciplinary convictions); **but see** Murphy v. Dep't of Corr. &
Rehab., 2008 WL 111226 at *7 (N.D. Cal. 2008) (review of claim
(continued...))

1 In particular, Docken appears to create a lower threshold for
2 establishing the existence of federal habeas jurisdiction in some
3 instances as opposed to the standards articulated in Bostic and
4 Ramirez.

5 Some courts, for example, have applied the Docken standard
6 to cases like the instant case, where a petitioner seeks
7 expungement alleging that a procedure used during a disciplinary
8 hearing violated his due process rights. See supra, n.1. In
9 these cases, habeas jurisdiction has been found to exist because
10 expungement of a disciplinary conviction could potentially affect
11 the duration of a prisoner's confinement. Indeed, because parole
12 review panels consider prison conduct as a factor in determining
13 parole eligibility, an expungement of a prisoner's disciplinary
14 record could potentially affect his eligibility for parole, and
15 therefore could potentially affect the duration of his
16 confinement.

17 The Docken standard for establishing federal habeas
18 jurisdiction, however, is arguably limited to petitioners
19 "challenging aspects of [] parole review", such as the timing
20 between parole hearings, and not direct challenges to
21 disciplinary convictions.

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23 ¹(...continued)
24 proper because expungement of disciplinary conviction could
25 affect duration of confinement, and because the violation
26 actually did serve as a basis for denial of parole in this case);
27 Rodarte v. Grounds, 2011 WL 2531300, at *3-4 (N.D. Cal. 2011)
28 (despite no evidence that petitioner was ever denied parole based
on disciplinary conviction, the impact of such convictions could
potentially affect parole eligibility); see also Hardney v.
Carey, 2011 WL 1302147 (E.D. Cal. 2011).

1 Docken, 393 F.3d at 1031 (timing between parole hearings is “even
2 more related to the duration of [] confinement than eligibility
3 for parole in the abstract”). Docken specifically dealt with a
4 prisoner’s claim with respect to the length of time between
5 parole hearings, whereas in Ramirez and Bostic, the petitioners
6 attacked the disciplinary hearings themselves and the resulting
7 convictions. Additionally, Docken distinguished Ramirez, stating
8 “[u]nlike this case, Ramirez concerned a challenge to internal
9 disciplinary procedures and administrative segregation that
10 resulted from it. Ramirez’s suit did not deal with the fact or
11 duration of his confinement.” Docken, 393 F.3d at 1030 n.4.

12 Under this reasoning, which this Court hereby adopts, the
13 Ramirez and Bostic standards apply to this case, while Docken
14 does not, because petitioner is attacking the disciplinary
15 procedures and the resulting conviction, not aspects of parole
16 review.

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18 **II. HABEAS JURISDICTION TO REVIEW PETITIONER’S DISCIPLINARY**
19 **CONVICTION**

20 Bostic established federal jurisdiction to review
21 expungements where it is likely to accelerate eligibility for
22 parole. Bostic, 884 F.2d at 1269. Although a disciplinary
23 conviction will likely be an important consideration to any
24 parole board determination of eligibility, it cannot be said that
25 the conviction would likely accelerate eligibility, because many
26 factors go into determining whether a prisoner is eligible for
27 parole.

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1 See Cal. Code Regs., tit. 15 § 2402(a) (listing eligibility
2 factors considered by parole boards); see also Calderon-Silva,
3 2010 WL 5392895, at *3 (“[a]lthough a disciplinary conviction may
4 not help an inmate who is seeking release on parole, it is only
5 one of a myriad of considerations relevant to a parole
6 decision”). For example, parole board panels consider

7 prisoner’s social history; past and present mental
8 state; past criminal history, including involvement in
9 other criminal misconduct which is reliably documented;
10 the base and other commitment offenses, including
11 behavior before, during and after the crime; past and
present attitude toward the crime; any conditions of
treatment or control, including the use of special
conditions under which the prisoner may safely be
released to the community.

12 Cal. Code Regs., tit. 15 § 2402(b). Panels also consider
13 previous record of violence, social history, sexual offenses,
14 psychological factors, and institutional behavior. Cal. Code
15 Regs., tit. 15 § 2402(c). The ultimate decision rests on whether
16 “the prisoner will pose an unreasonable risk of danger to society
17 if released from prison.” Cal. Code Regs. tit. 15, § 2402(a).

18 Similarly, under Ramirez, even if petitioner is successful
19 on the merits of his challenge to his disciplinary conviction,
20 expungement might, but would “not necessarily shorten” his
21 sentence. Ramirez, 334 F.3d at 859. The presence of one
22 negative factor may or may not foreclose a favorable parole
23 determination.

24 The impact of expunging Petitioner’s disciplinary conviction
25 on parole eligibility, therefore, is simply too speculative to
26 hold federal habeas jurisdiction exists. Expungement would not
27 necessarily shorten his sentence, nor can it be said to be likely
28 to accelerate his eligibility for parole.

1 United States Supreme Court precedent provides additional
2 support for this analysis. In Sandin v. Conner, 515 U.S. 472;
3 115 S. Ct. 2293 (1995), a prisoner brought forth a claim arguing
4 that a Hawaii prison regulation and the Due Process Clause
5 afforded the prisoner a protected liberty interest such that a
6 disciplinary sentence of 30 days segregation was
7 unconstitutional. In finding the 30-day punishment itself
8 constitutional, the court also addressed the impact of the
9 conviction on his parole eligibility in the future:

10 Nor does [Petitioner's] situation present a case where
11 the State's action will inevitably affect the duration
12 of his sentence. Nothing in Hawaii's code requires the
13 parole board to deny parole in the face of a misconduct
14 record or to grant parole in its absence, Haw. Rev.
15 Stat. §§ 353-68, 353-69 (1985), even though misconduct
16 is by regulation a relevant consideration, Haw. Admin.
17 Rule § 23-700-33(b) (effective Aug. 1992). The
18 decision to release a prisoner rests on a myriad of
19 considerations. And, the prisoner is afforded
20 procedural protection at his parole hearing in order to
21 explain the circumstances behind his misconduct record.
22 Haw. Admin. Rule §§ 23-700-31(a), 23-700-35(c),
23 23-700-36 (1983). The chance that a finding of
24 misconduct will alter the balance is simply too
25 attenuated to invoke the procedural guarantees of the
26 Due Process Clause.

19 Id. at 487 (emphasis added); see also Spencer v. Kemna, 523 U.S.
20 1, 14, 118 S. Ct. 978, 986 (1998) (parole revocation impacting
21 future parole proceedings is only a "possibility rather than
22 certainty or even a probability" and is "simply one factor, among
23 many, that may be considered by the parole authority in
24 determining whether there is a substantial risk that the parole
25 candidate will not conform to reasonable conditions of parole");

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1 Wilson v. Terhune, 319 F.3d 477, 480-481 (9th Cir. 2003)
2 (adopting Spencer stating "[b]ecause the decision whether to
3 grant parole is left to the judgment of the Board of Prison
4 terms, Cal. Code Regs. Tit. 15 § 2402, the likelihood of delayed
5 or denied parole is a type of nonstatutory consequence dependant
6 on discretionary decisions that is insufficient to apply the
7 presumption of collateral consequences").

8 As the Supreme Court has recognized, parole determinations
9 can rest on any number of different factors.
10 Consequently, federal habeas jurisdiction to review Petitioner's
11 claim for expungement is absent under the facts of this case.

12
13 **III. FEDERAL HABEAS JURISDICTION TO REVIEW PETITIONER'S CLAIM FOR**
14 **RESTORATION OF GOOD TIME CREDITS**

15 Petitioner is serving an indeterminate life sentence with
16 the possibility of parole. He lost 360 days of good-time credits
17 as a result of his disciplinary conviction. The Preiser Court
18 held that a prisoner may seek federal habeas relief from a loss
19 of good-time credit where restoration of those credits would
20 result in his immediate release from prison or in shortening the
21 length of his confinement. Preiser, supra, 411 U.S. at 487.

22 Under Cal. Code Regs tit. 15, § 2400, good-time credits in
23 Petitioner's case would only serve to reduce his minimum eligible
24 parole date. Petitioner, however, had already passed his minimum
25 eligible parole date as of the time of his disciplinary
26 conviction. Thus, his good-time credits are meaningless to an
27 extent because the credits can no longer reduce his minimum
28 eligible parole date.

1 See e.g., Thomas v. Wong, 2010 WL 1233909 at *3-4 (N.D. Cal.
2 2010) (claim of petitioner, an indeterminate-sentenced inmate who
3 challenged loss of good time credit, not cognizable on federal
4 habeas review because claim did not inevitably effect fact or
5 length of confinement); Norman v. Salazar, 2010 WL 2197541 at
6 *2-3 (C.D. Cal. 2010) (petitioner's claim seeking restoration of
7 good-time credit not cognizable on federal habeas review;
8 punishment had no bearing on the fact or duration of petitioner's
9 confinement because petitioner was serving indeterminate life
10 sentence and minimum eligible parole date had passed);
11 Calderon-Silva v. Uribe, 2010 WL 5392895 (C.D. Cal. Aug. 31,
12 2010) (same).

13 California, however, also has a separate "postconviction
14 credit" scheme by which prisoners earn credits that effectively
15 reduce a prisoner's period of confinement. Cal. Code Regs. tit.
16 15, § 2400 ("[t]he standards for the department's action in
17 reducing the minimum eligible parole date and the standards for
18 the board's decision whether to reduce the period of confinement
19 are different"). Postconviction credits are not granted,
20 however, until a reviewing parole board establishes a base level
21 of confinement. Cal. Code Regs. tit. 15, § 2400. And even then,
22 whether and when a prisoner may earn credits to reduce his term
23 of confinement is within the discretion of the board. Id. Here,
24 the record does not establish that a parole board has yet
25 established Petitioner's period of confinement.

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1 The impact of Petitioner's loss of good-time credit on
2 shortening his term of confinement, therefore, is also too
3 speculative. Not only is the loss of credits largely meaningless
4 in terms of reducing his minimum eligible parole date, but
5 whether or when these credits would be applied to impact
6 Petitioner's period of confinement is a decision within the sole
7 discretion of a reviewing parole board. Thus, Petitioner's claim
8 seeking restoration of good-time credits under the facts of this
9 case is not cognizable for federal habeas review.

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11 **IV. CONCLUSION**

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13 This Court finds that federal habeas jurisdiction is not
14 available for relief under the facts of this case. The likely
15 impact of expunging Petitioner's disciplinary conviction on
16 Petitioner's future parole eligibility is too speculative given
17 the myriad of factors considered by a reviewing parole board.
18 Additionally, Petitioner's good-time credit reduction cannot
19 impact his minimum eligible parole date because that date has
20 already passed. Whether these credits will be meaningful to his
21 period of confinement at a future time is pure speculation as all
22 decisions regarding credits are within the sole discretion of a
23 reviewing parole board. Thus, Petitioner's disciplinary record
24 and loss of good-time credits do not sufficiently impact
25 Petitioner's eligibility for parole or the duration of his
26 confinement to be eligible for federal habeas review.

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1 Given the foregoing, then, IT IS HEREBY ORDERED that:


2 1. The Findings and Recommendations, filed August 31, 2011,
3 are REJECTED;

4 2. Respondent's September 23, 2010 Motion to Dismiss is
5 GRANTED;

6 3. Petitioner's motion for a 45-day extension of time to
7 further respond to Respondent's objections, ECF No. 22, is DENIED
8 since any further input from Petitioner will not change the
9 analysis set forth above.

10 IT IS SO ORDERED.

11 Dated: September 30, 2011

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14 MORRISON C. ENGLAND, JR.
15 UNITED STATES DISTRICT JUDGE
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