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

MITCHELL CLYDE FARRELL,

Petitioner,

No. 2:09-cv-3439-WBS-JFM (HC)

vs.

R.E. BARNES,

Respondent.

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding through counsel with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. With this petition, petitioner does not challenge his underlying conviction and sentence. Rather, petitioner challenges a finding of guilt following a prison disciplinary hearing held on November 29, 2008. Although initially charged with theft, a “serious” violation, petitioner was found guilty of an administrative violation, “Unauthorized acquisition of state property valued at \$50 or less,” in violation of 15 Cal. Code Regs. tit. 15, § 3006. Petitioner was assessed no loss of good time credit. Petitioner claims his due process and equal protection rights were violated.

On February 26, 2010, respondent filed a motion to dismiss for failure to state cognizable grounds for federal habeas relief. Petitioner filed an opposition to the motion, and respondent has filed a reply. (Docket Nos. 13 & 14.)

1 ANALYSIS

2 The court finds that the dispositive issue here is whether petitioner’s claims are
3 appropriately brought in a habeas petition. It is evident that petitioner is not contesting the fact
4 or duration of his confinement. Instead, petitioner is contesting a finding of guilt following a
5 disciplinary hearing in which no good time credits were revoked. Petitioner argues that the
6 disciplinary action may adversely affect his chances of a future parole suitability finding.

7 While the Constitution does not guarantee good-time credits for acceptable
8 behavior while in prison, Wolff v. McDonnell, 418 U.S. 539, 557 (1974), the Supreme Court has
9 held that where the state has created a right to earn credits, “due process requires procedural
10 protections before a prison inmate can be deprived of a protected liberty interest in good time
11 credits.” Superintendent, Mass. Corr. Inst., Walpole v. Hill, 472 U.S. 445, 453 (1985) (citing
12 Wolff, 418 U.S. at 557). Thus, an inmate who is deprived of good-time credits without first
13 having been afforded procedural due process may challenge the loss in a federal habeas petition.
14 Wolff, 418 U.S. at 557. However, petitioner makes no such claim in this case and, in fact, he
15 was not deprived of any good-time credits as a result of this incident.

16 Furthermore, although petitioner argues that his chances for future parole
17 eligibility may be negatively affected by the disciplinary action, the Supreme Court has held that
18 the mere possibility of an adverse parole decision does not implicate a liberty interest:

19 Nothing . . . requires the parole board to deny parole in the face of a misconduct
20 record or to grant parole in its absence, even though misconduct is by regulation a
21 relevant consideration. The decision to release a prisoner rests on a myriad of
22 considerations. And, the prisoner is afforded procedural protection at his parole
hearing in order to explain the circumstances behind his misconduct record. The
chance that a finding of misconduct will alter the balance is simply too attenuated
to invoke the procedural guarantees of the Due Process Clause.

23 Sandin v. Conner, 515 U.S. 472, 487 (1995) (citations omitted).

24 Therefore, this court recommends that the petition be dismissed for lack of
25 jurisdiction. Petitioner’s claims are more appropriately raised by way of complaint pursuant to
26 42 U.S.C. § 1983.

1 Having determined that the court is without jurisdiction over the petition, the
2 court need not address respondent's remaining arguments.

3 Accordingly, IT IS HEREBY RECOMMENDED that:

- 4 1. Respondent's February 26, 2010 motion to dismiss be granted; and
5 2. Petitioner's December 11, 2009 petition for writ of habeas corpus be
6 dismissed.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
9 days after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: June 28, 2010.

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18 UNITED STATES MAGISTRATE JUDGE

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