

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

RONALD FOSTER,

Petitioner,

No. 2:10-cv-0407 FCD KJN P

vs.

M.D. MCDONALD, WARDEN,

ORDER and

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

I. Introduction

Petitioner is a state prisoner proceeding without counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner alleges that after a nonadverse transfer, he was placed on work group/privilege group C¹ in violation of his due process rights. Petitioner claims, without authority, that he has a liberty interest in retaining a particular work

¹ Inmates in work group C are more commonly referred to as “C-status” inmates. C-status is the California Department of Correction and Rehabilitation’s classification for inmates who fail to comply with, or whose conduct interferes with, prison program requirements. Cal. Code Regs. tit. 15 §§ 3044(b)(5)(A), 3044(f). C-status classification is determined by a classification committee. Cal. Code Regs. tit 15 § 3044(b)(4). C-status inmates do not earn work credits. Cal. Code Regs. tit 15 § 3044(b)(5)(A). The inmate remains in a zero-credit-earning status until classified for placement in a credit-qualifying work group. Cal. Code Regs. tit 15 § 3044(b)(5)(B). After being placed on C-status, the inmate can submit a written request to be removed from C-status. Cal. Code Regs. tit 15 § 3044(b)(5)(B).

1 group/privilege group status. Respondent has filed a motion to dismiss petitioner’s claim on the
2 ground that petitioner fails to state a cognizable claim for federal habeas relief. On October 5,
3 2010, petitioner filed a motion for extension of time to file an opposition, along with his
4 opposition. Good cause appearing, petitioner’s motion will be granted. On October 18, 2010,
5 respondent filed a reply.

6 II. Standards/Analysis

7 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to
8 dismiss a petition if it “plainly appears from the petition and any attached exhibits that the
9 petitioner is not entitled to relief in the district court” Rule 4, Rules Governing Section
10 2254 Cases; see also White v. Lewis, 874 F.2d 599, 602-03 (9th Cir. 1989) (meritorious motions
11 to dismiss permitted under Rule 4); Gutierrez v. Griggs, 695 F.2d 1195, 1198 (9th Cir. 1983)
12 (Rule 4 “explicitly allows a district court to dismiss summarily the petition on the merits when no
13 claim for relief is stated”); Vargas v. Adler, 2010 WL 703211, at *2 (E.D. Cal. 2010) (granting
14 motion to dismiss a habeas claim for failure to state a cognizable federal claim). Moreover, the
15 Advisory Committee Notes to Rule 8 of the Rules Governing Section 2254 Cases indicate that
16 the court may dismiss a petition for writ of habeas corpus: on its own motion under Rule 4;
17 pursuant to the respondent’s motion to dismiss; or after an answer to the petition has been filed.
18 See, e.g., Miles v. Schwarzenegger, 2008 WL 3244143, at *1 (E.D. Cal. Aug. 7, 2008)
19 (dismissing habeas petition pursuant to respondent’s motion to dismiss for failure to state a
20 claim). However, a petition for writ of habeas corpus should not be dismissed without leave to
21 amend unless it appears that no tenable claim for relief can be pleaded were such leave granted.
22 Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

23 In order to state a due process claim, petitioner must show that a constitutionally
24 protected liberty interest is implicated. Baumann v. Arizona Dept. of Corrections, 754 F.2d 841,
25 844 (9th Cir. 1985). A state may create a constitutionally protected liberty interest if it
26 establishes regulatory measures that impose substantive limitations on the exercise of official

1 discretion. Hewitt v. Helms, 459 U.S. 460, 470-71 (1983), overruled in part by Sandin v.
2 Connor, 515 U.S. 483, 484 (1995).

3 However, a state prisoner does not have a liberty interest in a classification status
4 under the Fourteenth Amendment. Hernandez v. Johnston, 833 F.2d 1316,1318 (9th Cir. 1987);
5 see Moody v. Daggett, 429 U.S. 78, 88 n.9 (1976) (Due Process Clause not implicated by federal
6 prisoner classification and eligibility for rehabilitative programs, even where inmate suffers
7 “grievous loss”).

8 In addition, California has not created a protected liberty interest in earning credits
9 for work. See California Penal Code § 2933 (“[w]orktime credit is a privilege, not a right”);
10 Kalka v. Vasquez, 867 F.2d 546, 547 (9th Cir. 1989) (“section 2933 does not create a
11 constitutionally protected liberty interest”). Because petitioner has no constitutionally protected
12 liberty interest in earning work time credit, an allegation that he is being deprived of the
13 opportunity to earn such credit cannot form a basis for habeas corpus relief. Also, California
14 Penal Code § 2934, which provides for waivers, cannot serve as the basis of a liberty interest in
15 work credits. Miller v. Rowland, 999 F.2d 389, 392 (9th Cir. 1993).

16 Petitioner simply has no constitutional right to a particular classification or to earn
17 credits. Because petitioner has not shown a violation of the Federal Constitution, petitioner is
18 not entitled to habeas corpus relief. See 28 U.S.C. § 2254 (habeas corpus available for violations
19 of the Constitution or federal law.) Respondent’s motion to dismiss should be granted.

20 III. Conclusion

21 Accordingly, IT IS HEREBY ORDERED that petitioner’s October 5, 2010
22 motion for extension of time (dkt. no. 14) is granted; the October 5, 2010 traverse and opposition
23 are deemed timely filed.

24 IT IS HEREBY RECOMMENDED that respondent’s September 1, 2010 motion
25 to dismiss (dkt. no. 13) be granted and this action be dismissed. If petitioner files objections, he
26 shall also address whether a certificate of appealability should issue and, if so, why and as to

1 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
2 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
3 § 2253(c)(3).

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

12 DATED: October 18, 2010

13
14
15 
16

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

17 fost0407.mtd