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

MARCUS L. CHRISTIAN,

No. CIV S-2:10-cv-0552-CMK-P

Plaintiff,

vs.

ORDER

D. VAN LEER, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983 challenging a prison disciplinary proceeding. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff's response to the court's July 2, 2010, order to show cause.

In the order to show cause, the court stated:

I. PLAINTIFF'S ALLEGATIONS

Plaintiff names the following as defendants: D. Van Leer, E. Sandoval, Warden of High Desert State Prison, and Susan Hubbard, Director of Corrections for CDCR. Plaintiff claims:

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1 On May 16th 2009, I received a 115 for “fighting resulting
2 in the use of force.” On June 17th 2009 Lt. D. Van Leer,
3 heard my 115 and adjudicated 90 days of privilege group
4 “C.” I was then made A1-C. I was then take to committee
5 13 days later, where Lt. Van Leer & CCII Sandoval took
6 my work assignment from me for the 115 that was already
7 adjudicated a dissaplain. They faulsified documents to do
8 so, claiming I was transferred to another Higher security
9 facility. But I never left Facility-B. I was then not
10 provided with a 128G in the proper alotment of time to
11 meet time constraints, in an attempt to cover up wrong
12 doing. I subsequently lost time & wages. This was all
13 done while under the supervision of High Desert State
14 Prison’s Warden & the director of CDCR. The patitioner
15 then appealed the issue & was denied his actions requested.
16 However, was provided with a memorandum admitting to
17 his claim; Dated August 27th, 2009. The appeal was
18 persued to a higher level & numerous false statements were
19 claimed in a memorandum dated October 8th, 2009, which
20 the patitioner can prove, based on documents &
21 memorandums the patitioner was given. The patitioner
22 then appealed to the director of corrections, appeals
23 department, & had his appeal sent back “rejected.”
24 Claiming the patitioner failed to attach a 128G to his
25 appeal. The patitioner then sent it back to the director of
26 corrections with a letter explaining that there was a 128G
attached, & has always been one, fore the patitioner would
not of had his appeal heard on the first or second level
without one attached. The patitioner accused the CDCR of
trying to delay his appeal, to cover up High Desert State
Prison officials’ wrong doing. His appeal was sent back
“rejected” a second time for the same reason. His appeal
was also “rejected” by the Government Claims Board. So
He is now persuing his appeal in court. (Complaint, Doc.
1, errors in original).

Documents attached to the complaint reveal that plaintiff was
assessed a loss of good-time credits as a result of the disciplinary
finding.

II. DISCUSSION

Plaintiff seeks damages for alleged violations of due
process in the context of a prison disciplinary proceeding which
resulted in a guilty finding and loss of good-time credits. When a
state prisoner challenges the legality of his custody and the relief
he seeks is a determination that he is entitled to an earlier or
immediate release, such a challenge is not cognizable under 42
U.S.C. § 1983 and the prisoner’s sole federal remedy is a petition
for a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S.
475, 500 (1973); see also Neal v. Shimoda, 131 F.3d 818, 824 (9th

1 Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th
2 Cir. 1995) (per curiam). Thus, where a § 1983 action seeking
3 monetary damages or declaratory relief alleges constitutional
4 violations which would necessarily imply the invalidity of the
5 prisoner's underlying conviction or sentence, or the result of a
6 prison disciplinary hearing, such a claim is not cognizable under §
7 1983 unless the conviction or sentence has first been invalidated on
8 appeal, by habeas petition, or through some similar proceeding.
9 See Edwards v. Balisok, 520 U.S. 641, 646 (1987) (holding that §
10 1983 claim not cognizable because allegations of procedural
11 defects and a biased hearing officer implied the invalidity of the
12 underlying prison disciplinary sanction); Heck v. Humphrey, 512
13 U.S. 477, 483-84 (1994) (concluding that § 1983 not cognizable
14 because allegations were akin to malicious prosecution action
15 which includes as an element a finding that the criminal proceeding
16 was concluded in plaintiff's favor). In particular, where the claim
17 involves loss of good-time credits as a result of an adverse prison
18 disciplinary finding, the claim is not cognizable. See Blueford v.
19 Prunty, 108 F.3d 251, 255 (9th Cir. 1997). If a § 1983 complaint
20 states claims which sound in habeas, the court should not convert
21 the complaint into a habeas petition. See id.; Trimble, 49 F.3d at
22 586. Rather, such claims must be dismissed without prejudice and
23 the complaint should proceed on any remaining cognizable §
24 1983 claims. See Balisok, 520 U.S. at 649; Heck, 512 U.S. at 487;
25 Trimble, 49 F.3d at 585.

14 Because plaintiff was assessed a loss of good-time
15 credits, plaintiff's due process claim is not cognizable under §
16 1983 until such time as the underlying prison disciplinary finding
17 has been overturned or otherwise invalidated.

17 In his response, Plaintiff states that he is not suing for restoration of his lost credit,
18 and refers the court to documents he filed in support of his claim in May 2010. The court was in
19 receipt of those supporting documents, and reviewed them prior to issuing the previous order to
20 show cause. These documents support the fact that Plaintiff lost good-time credit as a result of
21 the prison disciplinary finding. Regardless of whether or not Plaintiff is specifically requesting
22 credit restoration, if Plaintiff is successful in prosecuting this case, the result would be to
23 undermine that disciplinary finding and the restoration of the lost credit would be inevitable.
24 Thus, his claim challenging the prison disciplinary action is not actionable under § 1983 until
25 such time as the finding has been overturned.

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