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

CURTIS JAMES LAY,

Petitioner,

No. CIV S-10-1642 WBS CHS

vs.

RICHARD IVES, Warden,

Respondent.

FINDINGS AND RECOMMENDATIONS

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I. INTRODUCTION

Curtis James Lay, a federal prisoner in custody of the Bureau of Prisons (“BOP”), proceeds pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Lay challenges the outcome of a 2009 prison disciplinary proceeding for which he lost 41 days Good Conduct Time.

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 13, 2009, while incarcerated at the Federal Correctional Institution in Petersburg, Virginia, Lay was served with an incident report charging him with Assaulting Any Person. The Description of the Incident provided:

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1 On January 22, 2009, at 10:30 am, inmate Lay, Curtis, #18851-016  
2 was involved in a serious Assault with inmate Roper, Sammie,  
3 #70123-054 in Unit D-North, Cell # 46. A review of the CCTV  
4 revealed that on January 22, 2009, at 10:00 a.m., Inmate Lay,  
5 Curtis approached inmate Roper in the common area of Unit D-  
6 North and they walked to cell 46. The CCTV revealed minutes  
7 later inmate Williams entered cell # 46. Seconds after the cell door  
8 is seen swinging open and you can see a flash of bodies. Inmate  
9 Roper states he was held from behind by an unknown inmate while  
10 inmate Lay, Curtis # 18851-016 assaulted him. Inmate Roper  
11 states, shortly thereafter, the unknown inmate placed him in a head  
12 lock while inmate Lay struck him in the face with a hard object  
13 causing him to become unconscious. The CCTV confirmed,  
14 inmate Williams, Lay and Roper was the only inmates [*sic*] in the  
15 cell at the time of the Assault. When the Officer arrived she  
16 observed inmate Lay and Williams standing over inmate Roper as  
17 inmate Roper laid unresponsive on the floor. During the assault  
18 inmate Williams sustained an abrasion to his left middle finger.  
19 Inmate Roper was medically assessed for multiple lacerations to  
20 his upper and lower lip, fractured nose, hematoma to his forehead,  
21 exophthalmos to his left eye and lacerations to both eye brow [*sic*].  
22 Inmate Roper had to be rushed to the local hospital for further  
23 medical treatments. Inmate Lay was medically assessed for a 2 cm.  
24 laceration over the right eye, a 1.5 cm. laceration over the left eye  
25 and a superficial laceration over the left upper chest.

14 (Attachment One to the declaration of Curtis Hise, Incident Report by K. Vaughan, SIS  
15 Lieutenant, dated and served 02/13/09.)

16 On February 19, 2009, Lay appeared before a Unit Discipline Committee and  
17 denied the charges. The matter was forwarded to a Discipline Hearing Officer (“DHO”) for  
18 further action.

19 On March 6, 2009, Lay appeared before the DHO. He requested and was  
20 provided with a staff representative, Officer Holmes. Due to a discrepancy in the Incident Report  
21 and supporting documentation as to the time of the incident, the hearing was postponed to March  
22 23, 2009 for clarification of the issue. On March 23, 2009, Lay waived his appearance before the  
23 DHO but provided a written statement that was delivered by Officer Holmes. Lay also requested  
24 that inmate Roper (the alleged victim) be called as a witness. The DHO questioned inmate  
25 Roper, who stated he did not remember anything and did not recall making any statements to  
26 investigating staff.



1 For purposes of this opinion, Lay’s grounds for relief will be addressed in a single  
2 discussion on the process due under the United States Constitution in a prison disciplinary  
3 hearing when the loss of Good Conduct Time is among the penalties assessed.

#### 4 IV. JURISDICTION AND APPLICABLE LAW

5 Relief by way of a writ of habeas corpus extends to a prisoner in custody under  
6 the authority of the United States who shows that his custody violates the Constitution, laws, or  
7 treaties of the United States. 28 U.S.C. § 2241(c)(3). “[A] prisoner may seek a writ of habeas  
8 corpus under section 2241 for ‘expungement of a disciplinary finding from his record if  
9 expungement is likely to accelerate the prisoner’s eligibility for parole.’” *Ramirez v. Galaza*, 334  
10 F.3d 850, 858 (9th Cir. 2003) (quoting *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989).

#### 11 V. DISCUSSION

12 Inmates subject to prison disciplinary action are not guaranteed the full panoply of  
13 rights afforded to criminal defendants under the Due Process Clause. Where a disciplinary  
14 proceeding results in the loss of a liberty interest, however, such as the loss of good conduct time  
15 credits, certain procedural protections must be afforded. *Wolff v. McDonnell*, 418 U.S. 539, 556-  
16 58 (1974); *Superintendent v. Hill*, 472 U.S. 445, 455-56 (1985). In such situations, due process  
17 requires: “(1) advance written notice of the disciplinary charges; (2) an opportunity, when  
18 consistent with institutional safety and correctional goals, to call witnesses and present  
19 documentary evidence in his defense; and (3) a written statement by the factfinder of the  
20 evidence relied on and the reasons for the disciplinary action.” *Hill*, 472 U.S. at 454 (citing  
21 *Wolff*, 418 U.S. at 563-67). If the charges are complex and it is unlikely the inmate will be able  
22 to collect and present relevant evidence, he may additionally be entitled to the assistance of  
23 another inmate or, if that is prohibited, a staff member. *Wolff*, 418 U.S. at 563.

24 Due process also requires that the disposition of a prison disciplinary hearing be  
25 supported by “some evidence” in the record. *Hill*, 472 U.S. at 455. This standard does not  
26 require an examination of the entire record, independent assessment of the credibility of

1 witnesses, or weighing of the evidence.; rather, the only question is whether “any evidence in the  
2 record... could support the conclusion reached by the disciplinary board.” *Id.* at 455-56.

3 Although this standard is “minimally stringent,” the evidence supporting the disciplinary decision  
4 must bear some indicia of reliability. *Cato v. Rushen*, 824 F.2d 703, 704-05 (9th Cir. 1987).

5           Review of the record reveals that Lay was afforded all the due process elements  
6 required by *Wolff v. McDonnell*. Written notice of the charges was provided on February 13,  
7 2009, substantially in advance of his initial appearance before the DHO on March 6, 2009. *See*  
8 *Wolff*, 418 U.S. at 564 (inmate must be given advance notice of at least 24 hours before hearing).  
9 Lay appeared before the DHO at the initial hearing and waived his appearance at the subsequent  
10 hearing. He had the opportunity to present witnesses and documentary evidence: his written  
11 statement was read and considered by the DHO and his requested witness was called and  
12 questioned. (*See* Declaration of Curtis Hise.) The DHO prepared a written statement of the  
13 evidence relied on and the reasons for the disciplinary action. (*See* Attachment Two to the  
14 declaration of Curtis Hise.) Lay does not dispute that he was served with a copy of this  
15 document.

16           Moreover, there was “some evidence” in the record, as set forth in both the  
17 incident report and the written summary of reasons for the disciplinary action, to support the  
18 finding of guilt. The evidence included, but was not limited to, the CCTV footage showing only  
19 three inmates walking into the cell, a staff member’s report that he found Lay and one other  
20 inmate standing over the unresponsive victim inmate, and the victim’s initial statement  
21 implicating Lay and another unknown inmate in the attack. Despite the fact that Lay denied the  
22 assault and the victim inmate claimed not to remember anything when interviewed by the DHO,  
23 the record contains ample evidence supporting the DHO’s finding of guilt. *See Hill*, 472 U.S. at  
24 457 (where “the record is not so devoid of evidence that the findings of the disciplinary board  
25 were without support or otherwise arbitrary,” those findings must be upheld); *see also Bostric v.*  
26 *Carlson*, 884 F.2d 1267, 1269-70 (9th Cir. 1989) (eyewitness account by reporting officer and

1 statement by inmate witness that he heard the disciplined inmate challenge another inmate to a  
2 fight were sufficient to support guilt).

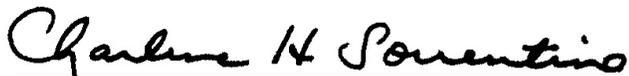
3 As to Lay's complaints about the assistance he received from Officer Holmes, his  
4 staff representative, Supreme Court precedent clearly establishes only that such assistance is  
5 required for illiterate inmates or in "complex" cases. *See Wolff*, 418 U.S. at 563. Lay does not  
6 allege that he is illiterate and this incident did not involve a complex matter. In any event,  
7 because there is no right to assistance of counsel in a prison disciplinary proceeding, there is no  
8 such claim as ineffective assistance of counsel by an assisting staff member in that context. *See*  
9 *Bostic*, 884 F.2d at 1274.

10 Lay was afforded all the process due under the United States Constitution in  
11 connection with the disciplinary proceeding in question. He therefore fails to meet his burden of  
12 showing that he is in custody in violation of the Constitution or laws of the United States and no  
13 relief is available. *See Silva v. Woodford*, 279 F.3d 825, 835 (9th Cir. 2002).

#### 14 VI. CONCLUSION

15 For the foregoing reasons, IT IS HEREBY RECOMMENDED that the petition be  
16 denied. These findings and recommendations are submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
18 after being served with these findings and recommendations, any party may file written  
19 objections with the court and serve a copy on all parties. Such a document should be captioned  
20 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
21 within the specified time waives the right to appeal the District Court's order. *Martinez v. Ylst*,  
22 951 F.2d 1153 (9th Cir. 1991). Any reply to the objections shall be filed and served within seven  
23 days after service of the objections.

24 DATED: February 3, 2012

25   
26 CHARLENE H. SORRENTINO  
UNITED STATES MAGISTRATE JUDGE