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

ANTONIO BARBOZA, JR.

Petitioner,

No. CIV S-10-1769 MCE EFB P

vs.

R. HILL,

Respondent.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_/

Petitioner is a state prisoner proceeding *in propria persona* with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a prison disciplinary conviction that resulted from a rules violation report issued against him on June 13, 2007, while he was imprisoned at Folsom State Prison. Petitioner seeks relief on due process grounds, claiming that the evidence was insufficient to support his conviction for distribution of a controlled substance (heroin). Upon careful consideration of the record and the applicable law, the undersigned recommends that petitioner’s application for habeas corpus relief be denied.

**I. Background**

On June 13, 2007, Correctional Officer A.S. Guzman wrote a rules violation report charging petitioner with “distribution of a controlled substance (heroin),” in violation of Cal.

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1 Code Regs. tit. 15, § 3016(c), a serious Division A-2 offense. Dckt. No. 11-1 at 12. Officer  
2 Guzman alleged that:

3 On Wednesday, June 13, 2007, at approximately 0900 hours,  
4 Investigative Services Unit (ISU) received a Controlled Substance  
5 Analysis Report from the Sacramento County Laboratory of  
6 Forensic Services containing the following results: The following  
7 test was conducted; Froehide, gas chromatography/mass  
8 spectrometry, Marquis, Mecke, the sample contained heroin  
9 (discetylmorphine), net weight 2.77 grams. This test was initiated  
10 based on the following:

11 On Thursday, May 17, 2007, at approximately 1040 hours,  
12 Investigative Services Unit (ISU), at Folsom State Prison (FSP),  
13 reported to the Triage Treatment Area, (TTA), in response to the  
14 possible drug overdose of an inmate. Upon arriving at the TTA, I  
15 identified the inmate as BARBOZA P-29628, housed in Cell  
16 5/AA1-36. I immediately reported to inmate BARBOZA's  
17 assigned cell and conducted a cell search.

18 During the course of the search, I discovered on the shelf of a  
19 locker, a brown substance, I suspected to be heroin, along with a  
20 plastic spoon, which contained a small piece of cotton, which  
21 appeared to be stained with heroin. The locker where I discovered  
22 the heroin, contained Inmate BARBOZA's personal property,  
23 which included letters addressed to BARBOZA as well as a  
24 package of medication with Inmate BARBOZA's name and CDCR  
25 number written on it. I photographed the suspected heroin, along  
26 with the spoon and the medication package, showing Inmate  
27 BARBOZA's name. I placed the contraband into a latex glove and  
28 secured it in my pocket. I completed the search, producing no  
29 further contraband. At approximately 1300 hours, I reported to the  
30 ISU Office to test the suspected heroin. The suspected heroin  
31 weighed 3.0 grams inclusive with packaging. Utilizing the  
32 Narcotics Identification Kit (NIK) test L, I tested a small amount  
33 of the suspected heroin, which produced a green color change  
34 indicating a presumptive positive result for heroin. This amount of  
35 heroin is consistent with distribution of a controlled substance. I  
36 photographed the heroin and processed it along with the  
37 photographs into evidence per institutional procedures. I secured  
38 the evidence into ISU evidence locker #3. **Inmate BARBOZA is  
39 not a participant in the Mental Health Program at Folsom  
40 State Prison. Inmate BARBOZA's TABE score is above 4.0.**

41 *Id.* at 12-13. (emphasis in original.)

42 The disciplinary hearing on the rules violation report commenced on September 20,  
43 2007. *Id.* at 14. Petitioner appeared before the Senior Hearing Officer, stated he was in good

1 health, acknowledged receipt of all reports to be used as evidence, and stated he was ready to  
2 proceed with the hearing. *Id.* The charges against petitioner were read to him and he  
3 acknowledged understanding those charges. *Id.* Petitioner pled not guilty and declined to make  
4 a statement. *Id.* He did not call any witnesses. *Id.* However, in response to questions posed by  
5 the Senior Hearing Officer, petitioner admitted that he overdosed on illegal narcotics and that the  
6 narcotics in the cell belonged to him. *Id.* However, he stated the narcotics were “for personal  
7 use.” *Id.*

8           Petitioner was found guilty of the charged offense of distribution of heroin. *Id.* The  
9 decision was based on the rules violation report, petitioner’s partial admission to the charge at  
10 the disciplinary hearing, and the contents of a supplemental report. *Id.* The supplemental report  
11 contained answers to questions posed to Correctional Officer Guzman, as follows:

12           a) Q1: What is your professional experience? A1: 12 years as an  
13           Officer at FSP. 3 years as an ISU Officer, during which time I  
14           received training in Drug Interdiction. I have investigated  
15           numerous drug cases, interviewed numerous inmates regarding  
16           narcotic activities, including but not limited to usable amounts,  
17           prices in prison, and common methods of trafficking.

18           b) Q2: In your experience as a Drug Interdiction Officer, what  
19           determines the charge of possession versus distribution? A2: A  
20           common amount for an inmate to purchase for personal  
21           consumption would be a small amount such as a \$50.00 paper or  
22           piece.

23           c) Q3: What is the typical amount an individual inmate would have  
24           in their possession for personal use? A3: The amount Inmate  
25           BARBOZA was caught in possession was worth approximately  
26           \$600.00 (3 grams) it could be cut and sold for much more.

27 *Id.* at 15. As a result of his conviction, petitioner was assessed a 180 day credit forfeiture and  
28 was placed on mandatory drug testing. *Id.* at 16.

29           On November 19, 2008, petitioner challenged his disciplinary conviction in a petition for  
30 writ of habeas corpus filed in the California Superior Court. Dckt. 11-1. The Superior Court  
31 denied the petition, reasoning as follows:

32 ////

1 Petitioner is challenging the outcome of disciplinary proceedings  
2 that took place with respect to 115 Rules Violation Report (RVR)  
3 log number 507-06-002. Specifically, he contends that the  
4 evidence was insufficient to support a finding of guilt for the  
charge of distribution of a controlled substance (Heroin) and  
asserts that, at most, the evidence could support a finding of simple  
possession.

5 An inmate is found guilty at a disciplinary hearing based upon a  
6 preponderance of the evidence standard. Due process requires that  
7 the findings of a disciplinary board be upheld if the decision is  
8 supported by “some evidence.” (*Superintendent v. Hill* (1985) 472  
9 U.S. 445, 454.) *Hill* expressly states that in applying the “some  
10 evidence” standard, courts are not required to examine the entire  
11 record, independently assess credibility of witnesses, or weigh the  
12 evidence. (*Id.*, at p. 455.) The court must only decide if there is  
13 any evidence in the record that would support the conclusion  
14 reached. (*Id.* at pp. 455-456.)

15 Contrary to petitioner’s belief, the record of the disciplinary  
16 hearing contains “some evidence” to support the SHO’s finding of  
17 guilt. Correctional officers found 2.77 grams of heroin in his  
18 possession and an expert witness essentially stated that this amount  
19 indicates possession for distribution. That petitioner claimed that  
20 the heroin was for personal use only and that correctional officials  
21 did not find other evidence of distribution, such as pay-owe sheets,  
22 excessive canteen items, packaging materials, or confidential  
23 information, is not a sufficient basis for overturning the finding as  
24 the courts have held that the standards that apply with respect to  
25 disciplinary proceedings are significantly more lenient that [sic]  
26 those applied with respect to criminal convictions. (*In re Zepeda*  
(2006) 141 Cal.App.4th 1493, 1499.) “Implicit in the ‘some  
evidence’ standard of review is the recognition that due process  
requirements imposed by the federal Constitution do not authorize  
courts to reverse prison disciplinary actions simply because, in the  
reviewing court’s view, there is a realistic possibility the prisoner  
being disciplined is not guilty of the charged infraction.” (*In re*  
*Zepeda, supra*, at p. 1498.) “Thus, to withstand court scrutiny for  
federal due process purposes, there is simply no requirement that  
the evidence ‘logically precludes any conclusion but the one  
reached by the disciplinary [official].’ . . . Rather, all that is  
required is “some evidence from which the conclusion of the  
[official] could be deduced.”” (*In re Zepeda, supra*, at p. 1499,  
citing to *Superintendent v. Hill, supra* at p. 456.)

24 *Id.*

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1           Petitioner subsequently challenged his disciplinary conviction in petitions for a writ of  
2 habeas corpus filed in the California Court of Appeal and California Supreme Court. Dckt. Nos.  
3 11-3, 11-4. Those petitions were summarily denied. Dckt. Nos. 11-5, 11-6.

## 4 **II. Analysis**

### 5 **A. Standards for a Writ of Habeas Corpus**

6           An application for a writ of habeas corpus by a person in custody under a judgment of a  
7 state court can be granted only for violations of the Constitution or laws of the United States. 28  
8 U.S.C. § 2254(a). A federal writ is not available for alleged error in the interpretation or  
9 application of state law. *See Wilson v. Corcoran*, 562 U.S. \_\_\_, \_\_\_, 131 S. Ct. 13, 16 (2010);  
10 *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991); *Park v. California*, 202 F.3d 1146, 1149 (9th Cir.  
11 2000).

12           Title 28 U.S.C. § 2254(d) sets forth the following standards for granting federal habeas  
13 corpus relief:

14                       An application for a writ of habeas corpus on behalf of a  
15 person in custody pursuant to the judgment of a State court shall  
16 not be granted with respect to any claim that was adjudicated on  
the merits in State court proceedings unless the adjudication of the  
claim -

17                       (1) resulted in a decision that was contrary to, or involved  
18 an unreasonable application of, clearly established Federal law, as  
determined by the Supreme Court of the United States; or

19                       (2) resulted in a decision that was based on an unreasonable  
20 determination of the facts in light of the evidence presented in the  
State court proceeding.

21           For purposes of applying § 2254(d)(1), “clearly established federal law” consists of  
22 holdings of the United States Supreme Court at the time of the state court decision. *Stanley v.*  
23 *Cullen*, 633 F.3d 852, 859 (9th Cir. 2011) (*citing Williams v. Taylor*, 529 U.S. 362, 405-06  
24 (2000)). Nonetheless, “circuit court precedent may be persuasive in determining what law is  
25 clearly established and whether a state court applied that law unreasonably.” *Stanley*, 633 F.3d  
26 at 859 (quoting *Maxwell v. Roe*, 606 F.3d 561, 567 (9th Cir. 2010)).

1 A state court decision is “contrary to” clearly established federal law if it applies a rule  
2 contradicting a holding of the Supreme Court or reaches a result different from Supreme Court  
3 precedent on “materially indistinguishable” facts. *Price v. Vincent*, 538 U.S. 634, 640 (2003).  
4 Under the “unreasonable application” clause of § 2254(d)(1), a federal habeas court may grant  
5 the writ if the state court identifies the correct governing legal principle from the Supreme  
6 Court’s decisions, but unreasonably applies that principle to the facts of the prisoner’s case.<sup>1</sup>  
7 *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003); *Williams*, 529 U.S. at 413; *Chia v. Cambra*, 360  
8 F.3d 997, 1002 (9th Cir. 2004). In this regard, a federal habeas court “may not issue the writ  
9 simply because that court concludes in its independent judgment that the relevant state-court  
10 decision applied clearly established federal law erroneously or incorrectly. Rather, that  
11 application must also be unreasonable.” *Williams*, 529 U.S. at 412. *See also Schriro v.*  
12 *Landrigan*, 550 U.S. 465, 473 (2007); *Lockyer*, 538 U.S. at 75 (it is “not enough that a federal  
13 habeas court, in its independent review of the legal question, is left with a ‘firm conviction’ that  
14 the state court was ‘erroneous.’”). “A state court’s determination that a claim lacks merit  
15 precludes federal habeas relief so long as ‘fairminded jurists could disagree’ on the correctness  
16 of the state court’s decision.” *Harrington v. Richter*, 562 U.S. \_\_\_, \_\_\_, 131 S. Ct. 770, 786  
17 (2011) (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). Accordingly, “[a]s a  
18 condition for obtaining habeas corpus from a federal court, a state prisoner must show that the  
19 state court’s ruling on the claim being presented in federal court was so lacking in justification  
20 that there was an error well understood and comprehended in existing law beyond any possibility  
21 for fairminded disagreement.” *Harrington*, 131 S. Ct. at 786-87.

22 If the state court’s decision does not meet the criteria set forth in § 2254(d), a reviewing  
23 court must conduct a de novo review of a habeas petitioner’s claims. *Delgado v. Woodford*,

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24 <sup>1</sup> Under § 2254(d)(2), a state court decision based on a factual determination is not to be  
25 overturned on factual grounds unless it is “objectively unreasonable in light of the evidence  
26 presented in the state court proceeding.” *Stanley*, 633 F.3d at 859 (quoting *Davis v. Woodford*,  
384 F.3d 628, 638 (9th Cir. 2004)).

1 527 F.3d 919, 925 (9th Cir. 2008); *see also Frantz v. Hazey*, 533 F.3d 724, 735 (9th Cir. 2008)  
2 (en banc) (“[I]t is now clear both that we may not grant habeas relief simply because of  
3 § 2254(d)(1) error and that, if there is such error, we must decide the habeas petition by  
4 considering de novo the constitutional issues raised.”).

5 The court looks to the last reasoned state court decision as the basis for the state court  
6 judgment. *Stanley*, 633 F.3d at 859; *Robinson v. Ignacio*, 360 F.3d 1044, 1055 (9th Cir. 2004).  
7 If the last reasoned state court decision adopts or substantially incorporates the reasoning from a  
8 previous state court decision, this court may consider both decisions to ascertain the reasoning of  
9 the last decision. *Edwards v. Lamarque*, 475 F.3d 1121, 1126 (9th Cir. 2007) (en banc). “When  
10 a federal claim has been presented to a state court and the state court has denied relief, it may be  
11 presumed that the state court adjudicated the claim on the merits in the absence of any indication  
12 or state-law procedural principles to the contrary.” *Harrington*, 131 S. Ct. at 784-85. This  
13 presumption may be overcome by a showing “there is reason to think some other explanation for  
14 the state court’s decision is more likely.” *Id.* at 785 (citing *Ylst v. Nunnemaker*, 501 U.S. 797,  
15 803 (1991)). Where the state court reaches a decision on the merits but provides no reasoning to  
16 support its conclusion, a federal habeas court independently reviews the record to determine  
17 whether habeas corpus relief is available under § 2254(d). *Stanley*, 633 F.3d at 860; *Himes v.*  
18 *Thompson*, 336 F.3d 848, 853 (9th Cir. 2003). “Independent review of the record is not de novo  
19 review of the constitutional issue, but rather, the only method by which we can determine  
20 whether a silent state court decision is objectively unreasonable.” *Himes*, 336 F.3d at 853.  
21 Where no reasoned decision is available, the habeas petitioner still has the burden of “showing  
22 there was no reasonable basis for the state court to deny relief.” *Harrington*, 131 S. Ct. at 784.

23 When it is clear, however, that a state court has not reached the merits of a petitioner’s  
24 claim, the deferential standard set forth in 28 U.S.C. § 2254(d) does not apply and a federal  
25 habeas court must review the claim de novo. *Stanley*, 633 F.3d at 860; *Reynoso v. Giurbino*, 462  
26 F.3d 1099, 1109 (9th Cir. 2006); *Nulph v. Cook*, 333 F.3d 1052, 1056 (9th Cir. 2003).

1           **B. Petitioner’s Due Process Claim**

2           Petitioner claims that the evidence introduced at his disciplinary proceeding was  
3 insufficient to support “the elevated finding of distribution versus possession.” Dckt. No. 1 at 4.  
4 He argues that the evidence established only that he was guilty of possession of heroin. *Id.* He  
5 contends that “there is no evidence of distribution in the record, that the evidence discovered  
6 only supports a possession charge, that the ‘common amount’ of dosage varies by individual  
7 drug user, [and] that there was no evidence of ‘pay/owe sheets’, drug sales paraphernalia or other  
8 evidence to support the greater charges.” *Id.* Petitioner also argues that the questions contained  
9 in the supplemental report, which provided partial support for his conviction, were “by design  
10 speculation, prejudicially inculpatory, and leading.” Dckt. No. 14 at 8. He explains that the  
11 question of whether an individual is distributing heroin depends on many factors, including the  
12 individual’s tolerance to the drug, “how much money a person had at their disposal,” and the  
13 “quality of the heroin at issue,” and not just on the amount of heroin the individual possessed at a  
14 given time. *Id.* at 8-9. Petitioner claims that Officer Guzman was not asked “pertinent and  
15 relevant” questions regarding all of the factors that determine whether an individual possesses  
16 drugs for personal use or for distribution. *Id.* at 9. He argues that his possession of heroin,  
17 standing alone, is insufficient to support his conviction because “there is no evidence of  
18 distribution admitted into the record of this case.” *Id.* He contends that he should have been  
19 found guilty of simple possession of heroin because this is what he “is actually guilty of,  
20 admitted to, and what the evidence introduced into the record supports.” *Id.* at 10. He also  
21 argues that the guilty finding was “made with a malicious and vindictive intent.” *Id.*

22           Finally, petitioner argues that there was insufficient evidence introduced at the  
23 disciplinary hearing regarding Officer Guzman’s credentials and his qualification to offer an  
24 expert opinion on what constitutes distribution of narcotics. He alleges that there was  
25 insufficient evidence Officer Guzman had “a credible scientific basis for his testimony about the  
26 use of the contraband heroin.” *Id.* at 11. He also contends that since Guzman was the person

1 who conducted the investigation and wrote the rules violation report, his testimony “should be  
2 considered highly prejudicial and suspect.” *Id.* at 11-12.<sup>2</sup>

3 In his prayer for relief, petitioner requests that the court “declare that the State prison  
4 disciplinary hearing on CDC-115 (log #FSP-507-06-002) is invalid,” declare that “there is only  
5 evidence of possession of heroin,” expunge all reference to the disciplinary conviction from his  
6 record, and “cease and desist all administrative punishments imposed thereby.” *Id.* at 14.

7 It is well established that inmates subjected to disciplinary action are entitled to certain  
8 procedural protections under the Due Process Clause but are not entitled to the full panoply of  
9 rights afforded to criminal defendants. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974); *see also*  
10 *Superintendent v. Hill*, 472 U.S. 445, 455-56 (1985); *United States v. Segal*, 549 F.2d 1293,  
11 1296-99 (9th Cir. 1977) (observing that prison disciplinary proceedings command the least  
12 amount of due process along the prosecution continuum). An inmate is entitled to advance  
13 written notice of the charge against him as well as a written statement of the evidence relied  
14 upon by prison officials and the reasons for any disciplinary action taken. *See Wolff*, 418 U.S. at  
15 563. An inmate also has a right to a hearing at which he may “call witnesses and present  
16 documentary evidence in his defense when permitting him to do so will not be unduly hazardous  
17 to institutional safety or correctional goals.” *Wolff*, 418 U.S. at 566. *See also Ponte v. Real*, 471  
18 U.S. 491, 495 (1985).

19 The decision rendered on a disciplinary charge must be supported by “some evidence” in  
20 the record. *Hill*, 472 U.S. at 455. A finding of guilt cannot be “without support” or “arbitrary.”  
21 *Id.* at 457. The “some evidence” standard is “minimally stringent,” and a decision must be  
22 upheld if there is any reliable evidence in the record that could support the conclusion reached  
23 by the fact finder. *Powell v. Gomez*, 33 F.3d 39, 40 (9th Cir. 1994) (citing *Hill*, 472 U.S. at 455-  
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25 <sup>2</sup> Petitioner also claims that his conviction “does not comport with State law.” As set  
26 forth above, claims based on violations of state law are not cognizable in federal habeas corpus  
proceedings. *Wilson v. Corcoran*, 131 S. Ct. at 16.

1 56 and *Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987)). See also *Burnsworth v. Gundersen*,  
2 179 F.3d 771, 773 (9th Cir. 1990); *Zimmerlee v. Keeney*, 831 F.2d 183, 186 (9th Cir. 1987).  
3 Determining whether this standard is satisfied does not require examination of the entire record,  
4 independent assessment of the credibility of witnesses, or the weighing of evidence. *Toussaint v.*  
5 *McCarthy*, 801 F.2d 1080, 1105 (9th Cir. 1986), *abrogated in part on other grounds by Sandin v.*  
6 *Connor*, 515 U.S. 472 (1995). Indeed, in examining the record, a court is not to make its own  
7 assessment of the credibility of witnesses or re-weigh the evidence. *Hill*, 472 U.S. at 455. The  
8 question is whether there is any reliable evidence in the record that could support the decision  
9 reached. *Toussaint*, 801 F.2d at 1105.

10 The due process requirement that a disciplinary conviction must be supported by “some  
11 evidence” that is “reliable” and not “arbitrary” has been satisfied in this case. Petitioner’s  
12 conviction was based on: (1) the rules violation report, which reported that 2.77 grams of heroin  
13 was found after a search of petitioner’s cell; (2) petitioner’s admission during the disciplinary  
14 hearing that the narcotics in the cell belonged to him; and (3) the contents of the supplemental  
15 report, in which Officer Guzman explained his credentials as an expert on narcotics trafficking  
16 and stated his opinion that the amount of heroin found in petitioner’s cell was substantially more  
17 than the common amount an inmate would purchase for personal consumption and could be “cut  
18 and sold.” When considered together, these three pieces of evidence are sufficient to support the  
19 decision reached by the disciplinary hearing officers in this case that petitioner possessed the  
20 heroin for purposes of distribution. The decision of the California Superior Court that  
21 petitioner’s conviction was supported by sufficient evidence, and therefore comported with due  
22 process, is not contrary to or an unreasonable application of the federal due process principles set  
23 forth above.

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1 **III. Conclusion**

2           Accordingly, IT IS HEREBY RECOMMENDED that petitioner’s application for a writ  
3 of habeas corpus be denied.

4           These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one  
6 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.” Failure to file objections  
9 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
10 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In  
11 his objections petitioner may address whether a certificate of appealability should issue in the  
12 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing  
13 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it  
14 enters a final order adverse to the applicant).

15 DATED: December 7, 2011.

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17 EDMUND F. BRENNAN  
18 UNITED STATES MAGISTRATE JUDGE  
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