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

NORMAN PAUL BLANCO,

Petitioner,

No. 2:10-cv-2695 DAD (HC)

vs.

MICHAEL MCDONALD,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Petitioner challenges an addition of four points to his classification score as part of a prison disciplinary conviction, contending that he was previously assessed six additional points to his classification score as a result of the same events. Relying on the due process clause of the Fourteenth Amendment, petitioner claims that this violates his federal constitutional rights because it is a second punishment for the same offense.

1 Under the Fourteenth Amendment's Due Process Clause, a
2 prisoner is entitled to certain due process protections when he is
3 charged with a disciplinary violation. Wolff v. McDonnell, 418
4 U.S. 539, 564-571, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Such
5 protections include the rights to call witnesses, to present
6 documentary evidence and to have a written statement by the
7 factfinder as to the evidence relied upon and the reasons for the
8 disciplinary action taken. *Id.*

9 These healthy procedural protections, however, adhere only
10 when the disciplinary action implicates a protected liberty interest
11 in some "unexpected matter" or imposes an "atypical and
12 significant hardship on the inmate in relation to the ordinary
13 incidents of prison life." Sandin v. Connor, 515 U.S. 472, 484, 115
14 S.Ct. 2293, 132 L.Ed.2d 418 (1995); *see also* Ramirez v. Galaza,
15 334 F.3d 850, 860 (2003) ("If the hardship is sufficiently
16 significant, then the court must determine whether the procedures
17 used to deprive that liberty satisfied Due Process.") (citations
18 omitted). The Supreme Court has identified few protected liberty
19 interests. *See, e.g.,* Vitek v. Jones, 445 U.S. 480, 493, 100 S.Ct.
20 1254, 63 L.Ed.2d 552 (1980) (identifying the freedom from
21 transfer to a mental hospital as a protected liberty interest);
22 Washington v. Harper, 494 U.S. 210, 221 222, 110 S.Ct. 1028, 108
23 L.Ed.2d 178 (1990) (identifying the freedom from the involuntary
24 administration of psychotropic drugs as a protected liberty
25 interest).

26 Serrano v. Francis, 345 F.3d 1071, 1077-78 (9th Cir. 2003). An inmate has no constitutional
right to a particular classification score. *See* Moody v. Daggett, 429 U.S. 78, 87 n.9 (1976).

Thus, petitioner has no cognizable due process claim arising from the addition of four points to
his classification score. Nor does the federal double jeopardy clause apply to prison disciplinary
proceedings; prison disciplinary sanctions "are not punishment for purposes of double jeopardy
because they are solely remedial." United States v. Brown, 59 F.3d 102, 104 (9th Cir. 1995).

Rule 4 of the Rules Governing Section 2254 Cases in the United States District
Courts authorizes a judge to summarily dismiss a habeas petition "[i]f it plainly appears from the
petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district
court." Rule 4, 28 U.S.C. foll. § 2254. For the reasons set forth *supra*, petitioner is not entitled
to relief in this court. Accordingly, the petition should be summarily dismissed

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1 In accordance with the above, IT IS HEREBY ORDERED that:

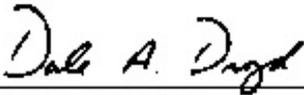
2 1. Petitioner’s application to proceed in forma pauperis (Docket No. 2), is
3 granted;

4 2. The Clerk of the Court is directed to assign this action to a United States
5 District Judge; and

6 IT IS HEREBY RECOMMENDED that this action be summarily 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 after being served with these findings and recommendations, petitioner may file written
10 objections with the court. The document should be captioned “Objections to Magistrate Judge's
11 Findings and Recommendations.” Any response to the objections shall be filed and served
12 within fourteen days after service of the objections. Petitioner is advised that failure to file
13 objections within the specified time may waive the right to appeal the District Court’s order.
14 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: October 19, 2010.

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18 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

19 DAD:hg
20 blan2695.156