

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**

WILLIAM R. BONNER,
Plaintiff,

No. CIV S-11-1823-CMK-P

vs.

ORDER

B. ROSZCO, et al.,
Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. 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 August 24, 2011, order directing plaintiff to show cause why this action should not be dismissed for failure to state a claim.

In the August 24, 2011, order to show cause, the court stated:

Plaintiff names the following as defendants: B. Roszko, S. Peck, J. Nuehring, Lt. Knudsen, and T. Williams. According to plaintiff, defendants Peck (deputy commissioner of the Board of Prison Hearings), Knudsen (prison watch commander), and Nuehring (associate warden) are supervisory defendants who are “responsible for promulgating, monitoring compliance, with enforcing and/or supervising the enforcement of policies and procedures affecting the CSP-Solano.”

1 Plaintiff claims that, on January 31, 2008, defendant
2 Williams prepared a CDC-115 rules violation report accusing plaintiff of
3 refusing to attend his work assignment, an accusation plaintiff maintains is
4 false. A disciplinary hearing was held on February 4, 2008, and plaintiff
5 was found guilty and assessed a loss of 90 days of good-time credits and
6 privileges. Plaintiff asserts that defendants “used information that was
7 false during the disciplinary hearing to find the Plaintiff guilty.” Plaintiff
8 claims that the loss of privileges may affect the outcome of future
9 appearances before the parole board. Plaintiff specifically does not seek
10 restoration of good-time credits.

11 When a state prisoner challenges the legality of his custody
12 and the relief he seeks is a determination that he is entitled to an earlier or
13 immediate release, such a challenge is not cognizable under 42 U.S.C.
14 § 1983 and the prisoner’s sole federal remedy is a petition for a writ of
15 habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see
16 also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City
17 of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (per curiam). Thus, where
18 a § 1983 action seeking monetary damages or declaratory relief alleges
19 constitutional violations which would necessarily imply the invalidity of
20 the prisoner’s underlying conviction or sentence, or the result of a prison
21 disciplinary hearing resulting in imposition of a sanction affecting the
22 overall length of confinement, such a claim is not cognizable under § 1983
23 unless the conviction or sentence has first been invalidated on appeal, by
24 habeas petition, or through some similar proceeding. See Heck v.
25 Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 not
26 cognizable because allegations were akin to malicious prosecution action
which includes as an element a finding that the criminal proceeding was
concluded in plaintiff’s favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25
(9th Cir. 1997) (concluding that § 1983 claim not cognizable because
allegations of procedural defects were an attempt to challenge substantive
result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding that § 1983
claim was cognizable because challenge was to conditions for parole
eligibility and not to any particular parole determination); cf. Wilkinson v.
Dotson, 544 U.S. 74 (2005) (concluding that § 1983 action seeking
changes in procedures for determining when an inmate is eligible for
parole consideration not barred because changed procedures would hasten
future parole consideration and not affect any earlier parole determination
under the prior procedures). In particular, where the claim involves loss of
good-time credits as a result of an adverse prison disciplinary finding, the
claim is not cognizable. See Edwards v. Balisok, 520 U.S. 641, 646
(1987) (holding that § 1983 claim not cognizable because allegations of
procedural defects and a biased hearing officer implied the invalidity of
the underlying prison disciplinary sanction of loss of good-time credits);
Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997); cf. Ramirez v.
Galaza, 334 F.3d 850, 858 (9th Cir. 2003) (holding that the favorable
termination rule of Heck and Edwards does not apply to challenges to
prison disciplinary hearings where the administrative sanction imposed
does not affect the over all length of confinement and, thus, does not go to
the heart of habeas). If a § 1983 complaint states claims which sound in
habeas, the court should not convert the complaint into a habeas petition.
See id.; Trimble, 49 F.3d at 586. Rather, such claims must be dismissed

1 without prejudice and the complaint should proceed on any remaining
2 cognizable § 1983 claims. See Balisok, 520 U.S. at 649; Heck, 512 U.S.
3 at 487; Trimble, 49 F.3d at 585.

4 The court finds that plaintiff's claim in this case is barred.
5 While plaintiff specifically states that he is not challenging the loss of
6 good-time credits, the fact remains that he lost such credits and success on
7 his claim that false information was used to find him guilty of a
8 disciplinary violation would necessarily imply the invalidity of the
9 sanction and, thus, the duration of plaintiff's confinement. It makes no
10 difference that plaintiff does not seek restoration of lost good-time credits.

11 Plaintiff's response to the order to show cause does not address the bar discussed above. For the
12 reasons outlined in the August 24, 2011, order, the court finds that this action should be
13 dismissed.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. This action is dismissed for failure to state a claim; and
- 16 2. The Clerk of the Court is directed to enter judgment and close this file.

17 DATED: November 14, 2011

18
19
20
21
22
23
24
25
26


CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE