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

DENNIS WALKER,

Petitioner,

No. 2:12-cv-1601 GEB JFM P

vs.

R. HILL,

Respondent.

FINDINGS & 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. This matter is before the court on respondent’s motion to dismiss. Petitioner opposes the motion. Upon review of the motion, the documents in support and opposition, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is presently serving an indeterminate life sentence with the possibility of parole for a 1992 conviction on two counts of first degree murder. Resp.’s Mot. to Dismiss (“MTD), Ex. 1.

On August 25, 2009, petitioner participated in a parole suitability hearing, which resulted in a finding of unsuitability based on petitioner’s failure to participate in vocational or

1 547 U.S. 573, 579 (2006) (quoting Muhammad v. Close, 540 U.S. 749, 750 (2004)).

2 ““Challenges to the validity of any confinement or to particulars affecting its duration are the
3 province of habeas corpus,’ “ whereas “challenge[s] to the circumstances of [] confinement ...
4 may be brought under § 1983.” Id.

5 “[H]abeas jurisdiction is absent, and a § 1983 action proper, where a successful
6 challenge to a prison condition will not necessarily shorten the prisoner’s sentence.” Ramirez v.
7 Galaza, 334 F.3d 850, 859 (9th Cir. 2003). Put another way, it is “the likelihood of the effect on
8 the overall length of the prisoner's sentence ... [that] determines the availability of habeas
9 corpus.” Docken v. Chase, 393 F.3d 1024, 1028 (9th Cir. 2004) (emphasis in original) (internal
10 quotation and citation omitted). In some instances, for example, “[t]he presence of a prison
11 disciplinary conviction can [] diminish the chance that an inmate will be granted a parole date.”
12 See Hardney v. Carey, 2011 WL 1302147, at *6 (E.D. Cal. 2011).

13 Petitioner’s disciplinary violation is the type of relevant information that parole
14 boards consider. Expungement of petitioner’s prison disciplinary violation, if warranted, could
15 affect the duration of his confinement by making it more likely that he would be granted parole.
16 See, e.g., Martin v. Tilton, 2011 WL 1624989, at *1 (9th Cir. 2011) (“Even though Martin did
17 not forfeit any work-time credits as a result of the disciplinary finding, we have jurisdiction
18 because the Board of Parole will consider the charge when it evaluates Martin's eligibility for
19 parole.”); Cleveland v. Curry, 2010 WL 4595186, at *2 (N.D. Cal. Nov.5, 2010) (claim seeking
20 expungement of serious disciplinary violation cognizable on habeas review, even though
21 thirty-day credit loss had no effect on sentence, because expungement was likely to accelerate
22 prisoner’s eligibility for parole); Murphy v. Department of Corrections and Rehabilitation, 2008
23 WL 111226, at *7 (N.D. Cal. Jan. 9, 2008) (action seeking expungement of serious disciplinary
24 conviction cognizable on habeas review because expungement could affect the duration of the
25 petitioner's confinement by making it more likely that he would be granted parole); Dutra v.
26 Department of Corrections and Rehabilitation, 2007 WL 3306638, at *6 (N.D. Cal. Nov. 6,

1 2007) (claim seeking expungement of disciplinary conviction cognizable on habeas review
2 because “convictions secured for disciplinary violations in such a proceeding may be a factor in
3 an inmate's parole consideration hearing”).

4 The undersigned thus finds that petitioner has stated a federal claim. The
5 disciplinary finding for possession of contraband is “criminal misconduct which is reliably
6 documented.” Cal. Code Regs. tit. 15 § 2402(b). The parole board is required to consider the
7 violation because it reflects on petitioner's behavior “after the crime.” *Id.* Indeed, at petitioner’s
8 2009 parole board hearing, petitioner’s prior disciplinary convictions were cited as one reason
9 for finding petitioner unsuitable for parole. Thus, it is at least ‘likely’ that expungement of the
10 disciplinary finding could accelerate petitioner’s eligibility for parole.

11 Respondent next argues that, even if petitioner succeeded in stating a federal
12 claim, the petition should nonetheless be dismissed because his parole suitability would not be
13 affected in light of his later, more serious rules violation resulting from petitioner’s act of cutting
14 and disfiguring another inmate and for which he was assessed 360 days loss of good time credits.
15 Respondent’s point is well-taken. Even if petitioner were to prevail on his claims in this case, it
16 appears highly unlikely that the fact or duration of his confinement would be affected. Thus,
17 based on the record in this case, the undersigned finds that expungement or reversal of the minor
18 conviction at issue here is not likely to accelerate petitioner’s eligibility for parole in light of his
19 later, more serious conviction. For these reasons, respondent’s motion to dismiss should be
20 granted.

21 Accordingly, IT IS HEREBY RECOMMENDED that respondent’s motion to
22 dismiss be granted.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
25 days after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
2 objections shall be filed and served within fourteen days after service of the objections. The
3 parties are advised that failure to file objections within the specified time may waive the right to
4 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: October 16, 2012.

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8 UNITED STATES MAGISTRATE JUDGE

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