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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK FLETCHER,
Petitioner,
v.
ERIC ARNOLD,
Respondent.

No. 2:14-cv-1492 JAM KJN P

FINDINGS & RECOMMENDATIONS

Petitioner is a state prisoner, proceeding pro se, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a prison disciplinary conviction for conspiracy to introduce a controlled substance into a state prison. The conviction resulted in a 180-day credit forfeiture. Petitioner seeks habeas relief on the grounds that prison officials allegedly violated his due process rights during the disciplinary process.

On May 28, 2015, the Ninth Circuit issued its opinion in Nettles v. Grounds, 788 F.3d 992, 995 (9th Cir. 2015) (holding that “a claim challenging prison disciplinary proceedings is cognizable in habeas only if it will *necessarily* spell speedier release from custody”) (emphasis in original) (internal quotation omitted).

On June 26, 2015, the undersigned issued an order directing petitioner to brief the issue of whether the operative petition for writ of habeas corpus ought to be dismissed for lack of subject matter jurisdiction pursuant to Nettles. (ECF No. 16.) Petitioner was given twenty-eight days to file his brief. He was also cautioned that a failure to do so would be interpreted as consent to


1 dismissal of his petition. (Id. at 3.)

2 More than fifty days have passed and plaintiff has failed to file a brief in response to the
3 June 26, 2015 order.¹ The undersigned therefore construes the failure to comply with the court's
4 order as consent to dismissal of the operative petition under Nettles.

5 Accordingly, IT IS HEREBY RECOMMENDED that petitioner's petition for a writ of
6 habeas corpus be dismissed and that this case be closed.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: August 20, 2015

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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27 ¹ On July 21, 2015, petitioner filed a traverse which does not address Nettles. Though immaterial
28 to the instant findings and recommendations, the undersigned notes that petitioner's traverse was
due no later than December 31, 2014 and is therefore untimely. (See ECF No. 15.)