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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILORAD OLIC,  
Petitioner,  
v.  
WARDEN JOE A. LIZARRAGA,  
Respondent.

No. 2:14-cv-2120 KJM GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 30, 2015, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has filed objections to the findings and recommendations, respondent has filed a reply, and petitioner has filed a response to respondent’s reply.

This action is proceeding on petitioner’s challenge to a prison disciplinary conviction he suffered for refusing to undergo random drug testing, resulting in thirty days of lost time credits. ECF No. 41 at 2. On July 17, 2015, respondent moved to dismiss the petition, contending that (1) petitioner’s claim is based on an alleged violation of state law and is therefore not cognizable

1 in this federal habeas corpus action; and (2) success on the claim would not necessarily result in  
2 petitioner's earlier release from prison and the court therefore lacks jurisdiction over the claim.  
3 ECF No. 32 at 3-4. On August 7, 2015, petitioner was granted until September 15, 2015 to file an  
4 opposition to the motion to dismiss. ECF No. 35. Petitioner did not file an opposition, and on  
5 October 7, 2015, the magistrate judge issued an order to show cause, ordering petitioner to file an  
6 opposition or statement of non-opposition to the motion within twenty-one days. ECF No. 40.  
7 Petitioner's response to the order to show cause was docketed on November 30, 2015, although  
8 the handwritten document itself is dated October 20, 2015. ECF No. 42. On November 30, 2015,  
9 before the handwritten document was docketed, the magistrate judge issued the findings and  
10 recommendations now before the court. The magistrate judge finds both that petitioner has not  
11 opposed the motion to dismiss, and that the motion should be granted on the merits because  
12 success on petitioner's claim will not "necessarily spell speedier release" from incarceration.  
13 *Nettles v. Grounds*, 788 F.3d 992, 1000 (9th Cir. 2015) (quoting *Skinner v. Switzer*, 562 U.S. 521,  
14 535 (2011)).

15 Petitioner's response to the October 7, 2015 order, ECF No. 42, and petitioner's  
16 objections to the findings and recommendations, ECF No. 43, are focused on his purported  
17 reasons for his failure to timely file an opposition to the motion to dismiss. In his January 4, 2016  
18 reply to respondent's reply to petitioner's objections, ECF No. 46, petitioner for the first time  
19 presents a substantive opposition to respondent's motion to dismiss. *See* ECF No. 46 at 2-6.  
20 Despite the untimeliness of the opposition, given the court's strong interest in resolving a case on  
21 its merits, the court will construe the most recent filing as the overdue opposition to respondent's  
22 motion to dismiss. Respondent will be granted fourteen days from the date of this order in which  
23 to file any reply, and the matter will then be referred back to the assigned magistrate judge for any  
24 new findings and recommendations on the merits of respondent's motion to dismiss that the  
25 magistrate judge deems appropriate. Having considered petitioner's filings, the court expresses  
26 its full confidence in the currently assigned magistrate judge to address the issues before the court  
27 fairly, and finds no reason to consider assigning a different magistrate judge.

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

1. The findings and recommendations filed November 30, 2015, are not adopted at this time;
2. Petitioner's January 4, 2016 reply to respondent's reply to petitioner's objections, ECF No. 46, is construed as an opposition to respondent's July 17, 2015 motion to dismiss;
3. Respondent is granted fourteen days from the date of this order in which to file a reply in support of the motion to dismiss, at which point the matter will be submitted without any further briefing by any party; and
4. This matter is referred back to the assigned magistrate judge for new findings and recommendations on the merits of respondent's July 17, 2015 motion to dismiss in light of the above.

DATED: February 9, 2016.

  
UNITED STATES DISTRICT JUDGE