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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND LAWRENCE,
Petitioner,
v.
FELICIA PONCE, Warden,
Respondent.

No. 2:16-cv-1584-AC P

MEMORANDUM AND ORDER

Petitioner is a federal prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He challenges a March 11, 2015 disciplinary conviction for violating Bureau of Prison (“BOP”) rules prohibiting possession of contraband. ECF No. 1 at 6. The government has responded (ECF No. 9) and petitioner has filed a traverse (ECF No. 10). The parties in this action have consented to proceed before a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). ECF Nos. 3, 5. After review of the record and, for the reasons stated below, the petition will be denied.

I. Background

On March 2, 2015, prison officials searched petitioner’s room at FCI Milan as part of a “shakedown.” ECF No. 9-1 at 53. Officials discovered a leafy green substance hidden in the room’s window frame. Id. The substance tested positive for marijuana. Id. at 41.

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1 Petitioner was provided with advance written notice of the charges against him when he
2 was given a copy of the incident report on March 3, 2015. Id. at 37. He was provided with
3 written notice of his disciplinary hearing rights on March 4, 2015. ECF No. 9-2 at 18. The
4 disciplinary hearing was held on March 11, 2015. Id. at 20. Petitioner did not request staff
5 assistance, request witnesses, or present documentary evidence in his defense. Id. The
6 disciplinary hearing officer (“DHO”) relied on staff memorandum confirming that the contraband
7 tested positive as marijuana, a photograph of the contraband, cell assignment records, and
8 petitioner’s statements. Id. at 21. Petitioner was found guilty of the charged violation. Id. at
9 20-21. As a result of the DHO’s finding, petitioner forfeited 41 days of good-time credit, lost
10 commissary and phone privileges for 90 days, and was fined \$50.00. Id. at 22.

11 Petitioner appealed and the disciplinary conviction was upheld. ECF No. 9-2 at 75; ECF
12 No. 9-1 at 21.

13 II. Legal Standards

14 A federal court may grant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241
15 if a federal prisoner can demonstrate that he “is in custody in violation of the Constitution or laws
16 or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3).

17 A prisoner’s due process rights are implicated where he is deprived of good-time credits.
18 See Sandin v. Conner, 515 U.S. 472, 477-478 (1995). With respect to prison disciplinary
19 proceedings, a prisoner is entitled to: (1) written notice of the charges; (2) at least 24 hours
20 between the time the prisoner receives written notice and the time of the hearing, so that the
21 prisoner may prepare his defense; (3) a written statement by the fact finders of the evidence they
22 rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call witnesses in
23 his defense, when permitting him to do so would not be unduly hazardous to institutional safety
24 or correctional goals; and (5) legal assistance to the prisoner where the prisoner is illiterate or the
25 issues presented are legally complex. Wolff v. McDonnell, 418 U.S. 539, 563-71 (1974). The
26 Supreme Court has held that “requirements of due process are satisfied if some evidence supports
27 the decision by the prison disciplinary board to revoke good time credits.” Superintendent v. Hill,
28 472 U.S. 445, 455 (1985). “Ascertaining whether this standard is satisfied does not require

1 examination of the entire record, independent assessment of the credibility of witnesses, or
2 weighing of the evidence. Instead, the relevant question is whether there is any evidence in the
3 record that could support the conclusion reached by the disciplinary board.” Id.

4 III. Analysis

5 Petitioner argues that his disciplinary should be expunged because his cellmate, Gregory
6 Hayes, took full responsibility for the contraband at issue. ECF No. 1 at 6. Petitioner argues that
7 he was at his assigned work when Hayes hid the contraband and the cell was searched. Id. He
8 claims that he had neither knowledge of the contraband nor an opportunity to ensure that his cell
9 was free of prohibited items. Id.

10 The evidence provided by respondent establishes that petitioner was afforded all the
11 procedural protections demanded by Wolff. He received notice of the charges against him on
12 March 3, 2015 – well before the March 11 hearing. ECF No. 9-1 at 37. Petitioner was afforded
13 opportunities to call witnesses and present documentary evidence, but declined both. ECF
14 No. 9-2 at 20; ECF No. 9-1 at 39. The DHO presiding at the hearing was impartial insofar as he
15 was not involved in the investigation of the incident. ECF No. 9-2 at 3 ¶ 6. Petitioner declined
16 staff assistance (ECF No. 9-1 at 39) and was given a copy of the DHO report after the hearing (id.
17 at 36). Petitioner does not appear to dispute that he was afforded the Wolff procedural
18 safeguards.

19 Next, the court finds that “some evidence” supported the decision to revoke petitioner’s
20 good-time credits. The DHO relied on an officer’s report, a supporting memorandum, and a
21 photograph of the contraband. Id. at 35-36. This was sufficient. See Hill, 472 U.S. at 456-57
22 (holding that statement of officer involved and his written report constituted “some evidence” for
23 purposes of a prison disciplinary proceeding); Bostic v. Carlson, 884 F.2d 1267, 1271 (9th Cir.
24 1989) (“The reporting officer's testimony constituted sufficient evidence to support the finding of
25 guilty.”); McPherson v. McBride, 188 F.3d 784, 786 (7th Cir. 1999) (incident report provides
26 some evidence to support disciplining inmate).

27 Petitioner’s argument that his conviction must be overturned because his cellmate
28 accepted responsibility is unpersuasive. Other courts in this circuit have rejected identical

1 arguments. See Givens v. McComber, 2015 U.S. Dist. LEXIS 142572, 2015 WL 6167660, at *6
2 (E.D. Cal. Oct. 20, 2015) (“Petitioner's denial of responsibility, and his cellmate's acceptance of
3 responsibility for the contraband do[] not require that the prison disciplinary [decision] be
4 overturned.”). Nothing requires the DHO responsible for deciding credibility issues to accept as
5 true a cellmate’s claim of sole responsibility. See Kiefer v. Hedgpeth, 2011 U.S. Dist. LEXIS
6 4505, 2011 WL 97732, at *3 (N.D. Cal. Jan. 12, 2011) (“the fact that an inmate offered a defense
7 did not mean that the hearing officer had to accept it as true,” and “[t]he fact that the cellmate
8 admitted possession of the [contraband] did not logically eliminate liability for [petitioner], as
9 both may have constructively possessed the [contraband].”); Castodio v. Grounds, 2013 U.S.
10 Dist. LEXIS 102263, 2013 WL 3815664, at *3 (N.D. Cal. July 21, 2013) (“the cellmate's
11 admitted possession of the [contraband] did not logically eliminate liability for [petitioner], as
12 both could have constructively possessed the [contraband].”). In his traverse, petitioner argues
13 that there was no finding of intent or evidence that he brought contraband into the cell or had
14 prior knowledge of the contraband. ECF No. 10 at 3. No such finding was required, however.

15 As noted above, this court is limited to asking only whether “some evidence” supported
16 the conviction. “Revocation of good time credits is not comparable to a criminal conviction and
17 neither the amount of evidence necessary to support such a conviction, nor any other standard
18 greater than some evidence applies in this context.” Hill, 472 U.S. at 456 (internal citations
19 omitted). Petitioner’s version of events – that his cellmate was solely responsible and he had no
20 knowledge of the drugs – is not implausible. Nevertheless, “[t]he Federal Constitution does not
21 require evidence that logically precludes any conclusion but the one reached by the disciplinary
22 board.” Id. at 457.

23 IV. Conclusion

24 Based on the foregoing, it is ORDERED that:

25 1. The petition for writ of habeas corpus (ECF No. 1) is DENIED; and

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2. The court declines to issue a certificate of appealability because reasonable jurists would not find this court's assessment of petitioner's claims debatable or wrong and these claims do not warrant encouragement to proceed further.

DATED: July 28, 2017.



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE