

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  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH STAFFORD,  
Petitioner,  
v.  
ERIC ARNOLD,  
Respondent.

No. 2: 16-cv-1655 JAM KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 1983. Petitioner challenges a 2014 prison disciplinary conviction for failing to obey an order. Pending before the court is respondent’s motion to dismiss on grounds that petitioner’s claims are not exhausted and procedurally defaulted. (ECF No. 11.) For the following reason, the parties are ordered to file further briefing.

Respondent argues that petitioner’s claims are not exhausted and procedurally defaulted because the California Supreme Court denied petitioner’s state habeas petition by citing In re Dexter, 25 Cal.3d 921, 925-26 (1979). Dexter stands for the proposition that a state habeas petitioner “will not be afforded judicial relief unless he has exhausted state administrative remedies.” Id. at 925.

The record contains the following, relevant documents regarding petitioner’s exhaustion of administrative remedies. On February 9, 2015, a memorandum was issued denying the merits

1 of petitioner's second level appeal, challenging the at-issue prison disciplinary, CSP-S-15-0026.  
2 (ECF No. 1 at 65.) On June 11, 2015, petitioner's third level grievance was rejected because it  
3 did not include the CDC Form Rules Violation Report. (Id. at 67.) Petitioner typed on the  
4 bottom of the form, apparently when he resubmitted his grievance to the third level, "I, Joseph  
5 Stafford, did send the complete record. It included the claimed missing CDC Form 115; I have  
6 another copy and declaration." (Id.)

7 On August 11, 2015, petitioner's resubmitted third level grievance was again rejected  
8 because it did not include the CDC Form 115, Rules Violation Report. (Id. 68.) The August 11,  
9 2015 response stated, "There is no RVR attached to this appeal. Attach the RVR as requested.  
10 Remove the 'declaration' dated June 29, 2015 from the appeal packet." (Id.) Petitioner  
11 handwrote on the bottom of the form, apparently when he resubmitted his grievance a second  
12 time, "I don't understand how you can't see the RVR that was previously attached. It's the first  
13 sheet under this one. Notice no holes or removal from 'your' original staples." (Id.) Petitioner  
14 signed and dated this comment on August 18, 2015. (Id.)

15 On November 12, 2015, petitioner's second resubmitted grievance was rejected because  
16 petitioner did include the *entire* CDC Form, Rules Violation Report. (Id. at 69.) The November  
17 12, 2015 response stated, "This is the third and final request for the required documentation. You  
18 have attached one, unsigned page from the RVR. You must attach the entire, completed final  
19 Rules Violation Report (RVR) and any supplemental documents that are attached to the RVR.  
20 Failure to cooperate will result in the cancellation of your appeal." (Id.) At the bottom of this  
21 form, petitioner wrote, "I went to my counselor, shown her this and she printed out these 3 pages  
22 attached." (Id.)

23 Petitioner's note at the bottom of the November 12, 2015 form rejecting his second  
24 resubmitted grievance suggests that he resubmitted the third level grievance a third time with the  
25 entire Rules Violation Report. However, the record contains no indication regarding whether  
26 petitioner received a response to this third resubmitted grievance. Accordingly, within twenty-  
27 one days of the date of this order, petitioner is directed to file a short briefing addressing whether  
28 he resubmitted his Director's Level grievance a third time after receiving the November 12, 2015

1 response. If petitioner resubmitted his Director's Level grievance a third time, petitioner shall  
2 describe the documents he attached to the third resubmitted grievance. If petitioner received a  
3 response, petitioner shall describe the response and attach any documents he received in response.

4 Respondent shall file a reply to petitioner's further briefing. Respondent shall address  
5 whether any records exist of a third resubmitted grievance filed by petitioner in response to the  
6 November 12, 2015 response. Respondent shall also address if petitioner received a response to  
7 any third resubmitted grievance. Respondent shall attach all relevant documents to the further  
8 briefing.

9 Accordingly, IT IS HEREBY ORDERED that petitioner's further briefing is due within  
10 twenty-one days of the date of this order; respondent's reply is due within fourteen days  
11 thereafter.

12 Dated: February 15, 2017

13   
14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE

16 Staf1655.fb  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28