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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILORAD OLIC,

 Petitioner,

 v.

JOE A. LIZARRAGA, Warden,

 Respondent.

No. 2:17-cv-00156 KJM AC P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The action proceeds on the petition filed on January 23, 2017, ECF No. 1, which challenges a 2014 prison disciplinary finding. Respondent has answered, ECF No. 25, and petitioner has filed a traverse, ECF No. 28.

I. Background

Petitioner is serving an indeterminate life sentence for murder. The petition filed in this court challenges not petitioner’s conviction, but a disciplinary finding that he violated prison rules by refusing a cellmate. ECF No. 1 at 1, 7. Petitioner was assessed 90 days of behavior credits. Id. at 12. He contends that the finding of guilt and resulting credit loss are invalid on the grounds that (1) he was not guilty, because his prior single cell status had been illegally revoked; and (2) he was denied a fair hearing in violation of his due process rights. Id. at 7.

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1 Plaintiff administratively appealed the disciplinary finding. ECF No. 1 at 14-26
2 (petitioner's Exhibit A) (administrative appeals and related documentation). The Third Level
3 Appeal Decision, which completed the administrative appeal process, is dated April 28, 2015. Id.
4 at 14. Plaintiff filed a petition for writ of habeas corpus in the California Supreme Court, which
5 was denied summarily on October 28, 2015, with citation to In re Dexter, 25 Cal.3d 921, 925
6 (1979). Id. at 28 (petitioner's Exhibit C).

7 In this court, the Warden initially responded to the petition with a motion to dismiss on
8 grounds of untimeliness. ECF No. 15. Following supplemental briefing (see ECF Nos. 20, 21,
9 22), that motion was denied. ECF Nos. 23 (Findings and Recommendations), 24 (order adopting
10 Findings and Recommendations). The Answer asserts lack of habeas jurisdiction and procedural
11 default; respondent also contends that petitioner is not entitled to relief under 28 U.S.C. §
12 2254(d). ECF No. 25.

13 II. This Court Lacks Habeas Jurisdiction

14 The federal court may entertain only habeas claims that come within the core of federal
15 habeas jurisdiction, Preiser v. Rodriguez, 411 U.S. 475, 487 (1973), meaning claims challenging
16 the validity or duration of a prisoner's confinement, Muhammad v. Close, 540 U.S. 749, 750
17 (2004); Dominguez v. Kernan, 906 F.3d 1127, 1137 (9th Cir. 2018). Accordingly, challenges to
18 prison disciplinary findings support federal habeas jurisdiction only if the disciplinary action
19 resulted in a credit loss that directly and necessarily affects the duration of confinement. Nettles
20 v. Grounds, 830 F.3d 922, 934-935 (9th Cir. 2016) (en banc), cert. denied 137 S. Ct. 645 (2017);
21 see also Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003) ("habeas jurisdiction is proper
22 where a challenge to the prison conditions would, if successful, necessarily accelerate the
23 prisoner's release.").

24 The Ninth Circuit held in Nettles, supra, that the district court lacked jurisdiction over the
25 discipline-related claim of a California inmate serving an indeterminate life sentence, because he
26 had not yet been found suitable for parole. Under these circumstances, and because many factors
27 independent of a particular disciplinary infraction can influence future parole suitability
28 determinations, neither expungement of the disciplinary finding nor restoration of lost good-time

1 credits would necessarily accelerate the inmate's release. Accordingly, the claim was not
2 cognizable in habeas. See Nettles, 830 F.3d at 934-935.

3 Respondent urges that the same result is compelled here, and the undersigned agrees.
4 Because petitioner is serving an indeterminate life sentence, the disciplinary matter can only
5 affect his release if he has already been found suitable for parole by the Board of Parole Hearings
6 and the credit loss changed his release date. See id. That plainly appears not to be the case. See
7 ECF No. 25 at 50-55 (CDCR Legal Status Summary). Petitioner does not dispute this.

8 Instead, petitioner argues that his case is distinguishable from Nettles because the
9 petitioner in that case was an American citizen not subject to deportation, while petitioner here is
10 a non-citizen facing immediate deportation if he is released to parole. ECF No. 28 at 1-2. Even if
11 petitioner's immigration detainer and deportability might affect the parole board's view of his
12 case, as petitioner seems to suggest, that does not mean that the 90-day credit loss at issue here
13 has any necessary effect on the duration of his current custody. They are two different things. IN
14 any event, petitioner's speculation about what the parole authorities might do is irrelevant.
15 Because he has not yet been found suitable for parole, and the 90-day credit loss remains but one
16 factor the Board might consider, this case falls squarely within the rule of Nettles.

17 If petitioner's lost credits were restored, and even if the disciplinary finding were to be
18 expunged, there would be no *direct* and *necessary* effect on his custody. See Nettles, 830 F.3d at
19 934-935. In other words, success in this action would not necessarily accelerate petitioner's
20 release. See Ramirez, 334 F.3d at 859. Accordingly, this court lacks jurisdiction to consider the
21 petition and respondent's additional contentions need not be addressed.

22 CONCLUSION

23 For all the reasons explained above, IT IS HEREBY RECOMMENDED that the petition
24 for writ of habeas corpus be denied.

25 These findings and recommendations are submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(1). Within twenty-one days
27 after being served with these findings and recommendations, any party may file written
28 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.” If petitioner files objections,
2 he shall also address whether a certificate of appealability should issue and, if so, why and as to
3 which issues. See 28 U.S.C. § 2253(c)(2). Any reply to the objections shall be served and filed
4 within fourteen days after service of the objections. The parties are advised that failure to file
5 objections within the specified time may waive the right to appeal the District Court’s order.

6 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 DATED: April 18, 2022

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9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE

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