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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE HILL,  
  
                                    Petitioner,  
  
                                    v.  
  
E. ARNOLD,  
  
                                    Respondent.

No. 2:17-cv-0994 CKD P

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. Petitioner has consented to the jurisdiction of the magistrate judge to conduct all further proceedings in this matter. ECF No. 5.

Examination of the indigency affidavit reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

**I. Factual Summary**

Based on the exhibits attached to the petition, it appears that petitioner is challenging a January 27, 2015 counseling chrono that he received for failing to sign the required paperwork to attend school as a new student , as well as a February 18, 2015 rules violation report (RVR) for his continued refusal to sign the form. The RVR was later reduced to an administrative level offense for which petitioner received counseling and a reprimand. ECF No. 1 at 87. Petitioner received another RVR on July 24, 2015 for failing to comply with a supervisor’s instructions

1 during a class. As a sanction, his privilege group was reduced for 30 days and he was referred to  
2 the unit classification committee for program review. ECF No. 1 at 115. In his habeas  
3 application, petitioner complains about the 30 day loss of his television and audio cassette player  
4 as part of the sanction for the July 2015 RVR. Id. at 130-134.

5 In his claims for relief, petitioner contends that he suffered reprisal and punishment for  
6 exercising his constitutional right to refuse to sign a school contract. ECF No. 1 at 5.  
7 Additionally, he alleges that his punishment was unlawful because it was based on an  
8 underground CDCR regulation and because it constituted an unlawful “stacking” of offenses.  
9 ECF No. 1 at 7-8. In his last claim for relief petitioner asserts that he was denied witnesses  
10 during his disciplinary hearing. Id. at 10. By way of relief, petitioner seeks the dismissal of his  
11 RVR violations and the expungement of them from his central prison file.

## 12 **II. Summary of Federal Habeas Law**

13 This court has jurisdiction to consider habeas petitions where the petitioner is “in custody  
14 pursuant to the judgment of a State court” and alleges that “he is in custody in violation of the  
15 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). Generally, a prisoner  
16 may challenge a prison disciplinary conviction by petition for writ of habeas corpus if the  
17 conviction resulted in the loss of good time credits, because credits impact the duration of the  
18 prisoner's confinement. Preiser v. Rodriguez, 411 U.S. 475, 487-88 (1973) (suit seeking  
19 restoration of good time credits was “within the core of habeas corpus in attacking the very  
20 duration of their physical confinement itself”). However, “[h]abeas corpus jurisdiction also exists  
21 when a petitioner seeks expungement of a disciplinary finding from his record if expungement is  
22 likely to accelerate the prisoner's eligibility for parole.” Bostic v. Carlson, 884 F.2d 1267, 1269  
23 (9th Cir. 1989); see also Nettles v. Grounds, 830 F.3d 922 (9th Cir. 2016) (en banc) (holding that  
24 petitioner’s constitutional challenge to a prison disciplinary violation can only be challenged in a  
25 42 U.S.C. § 1983 lawsuit and not in a federal habeas corpus action).

## 26 **III. Application of the Facts to the Law**

27 Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 provides for  
28 summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and

1 any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the  
2 instant habeas action petitioner is challenging disciplinary violations that did not impose any type  
3 of credit loss that would impact the sentence he is serving. He only lost prison privileges, such as  
4 access to his television and tape player in his cell, for a period of 30 days. Pursuant to Rule 4’s  
5 screening duty, petitioner is hereby ordered to show cause why the pending habeas application  
6 should not be summarily dismissed for lack of jurisdiction because petitioner’s claims do not  
7 affect the fact or duration of his confinement.

8 **IV. Plain Language Summary for Pro Se Party**

9 Since you are acting as your own attorney in this case, the court wants to make sure that  
10 the words of this order are understood. The following information is meant to explain this order  
11 in plain English and is not intended as legal advice.

12 Since you are not challenging your original conviction, the court does not understand how  
13 your claims are keeping you in custody. In order to continue with this habeas case you need to  
14 further explain why the disciplinary infractions have lengthened your sentence or how expunging  
15 them will lead to your speedier release. All you need to do is briefly explain how your  
16 disciplinary infractions have made, or will make, it harder to get out of prison. Your response to  
17 this order does not prevent you from raising your claims in a different type of federal lawsuit that  
18 is called a federal civil rights action pursuant to 42 U.S.C. § 1983.

19 Therefore, IT IS HEREBY ORDERED that:

- 20 1. Petitioner’s motion to proceed in forma pauperis (ECF No. 2) is granted;  
21 2. Petitioner is ordered to show cause why this petition should not be summarily  
22 dismissed for the reasons stated herein within 45 days from the date of this order; and,  
23 3. Petitioner is warned that the failure to respond to this order may result in the summary  
24 dismissal of this petition without further notice to petitioner.

25 Dated: July 12, 2017

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28 CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE