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United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH WAYNE SAMILTON,

No C-08-2755 VRW (PR)

Petitioner,

ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS

v

ROBERT A HOREL, Warden,

Respondent.

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I

Petitioner Kenneth Wayne Samilton, a state prisoner serving a 40 year prison term at Pelican Bay State Prison in Del Norte County, California following his robbery and assault convictions, seeks a writ of habeas corpus under 28 USC § 2254 challenging the forfeiture of 120 days of good-time credits following a March 10, 2007 disciplinary hearing at which he was found guilty of possession of alcohol.

Per order filed on July 21, 2008, the court found petitioner's claim that the hearing officer violated his due process rights, when liberally construed, colorable under § 2254 and ordered respondent to show cause why a writ of habeas corpus

1 should not be granted. Respondent has filed an answer and  
2 petitioner has filed a traverse.

3  
4 II

5 On March 1, 2007, a Pelican Bay State Prison correctional  
6 officer entered a cell shared by petitioner and inmate Reddick.  
7 The officer's report stated that he smelled an odor of alcohol and  
8 subsequently searched the cell. Doc #3, Ex B at 17. The officer  
9 found approximately four gallons of "pruno," a homemade fermented  
10 fruit alcohol, in a plastic bag rolled up in Reddick's mattress.  
11 Id. Reddick claimed responsibility for the alcohol. Id.  
12 Petitioner claims he was not in his cell at the time of the search.  
13 Doc #1 at 6.

14 Petitioner was charged with possession/manufacture of  
15 alcohol and was brought in front of a hearing officer on March 10,  
16 2007. At the hearing petitioner pled not guilty, claiming that he  
17 "didn't know anything about it." Doc #3, Ex B at 16. The hearing  
18 officer found petitioner guilty of "the fermentation or  
19 distillation of materials in a manner consistent with the  
20 production of alcohol or the physical possession of alcohol in an  
21 institution/facility or contract health facility." Id. In finding  
22 petitioner guilty, the hearing officer applied the following prison  
23 policy for a showing of possession:

24 All inmates are assigned areas within their  
25 living space for storage of personal  
26 property. Any contraband found within the  
27 area is considered the responsibility of that  
28 inmate. If this area is shared with another  
inmate, the inmates are jointly responsible  
with reasonable evidence both inmates were  
aware of its presence.

1 Id, emphasis in original.

2           The hearing officer found that petitioner was aware the  
3 alcohol was in his cell based on the amount of alcohol found and  
4 the odor detected by the reporting officer. Doc #3, Ex B at 17.  
5 The hearing officer additionally found that Reddick's confession  
6 did not carry strong weight because "an inmate may have more to  
7 fear from his cell partner and other inmates than any punishment  
8 assessed in a disciplinary hearing." Id. As punishment,  
9 petitioner forfeited 120 days of good-time credits. Id at 18.

10           Petitioner filed a petition for writ of habeas corpus in  
11 the superior court of Del Norte County. The superior court denied  
12 the petition, finding that the hearing officer's decision was  
13 supported by "some evidence" in the record. Doc #3, Ex C. The  
14 court relied on the portion of the record that showed that four  
15 gallons of pruno were found rolled up in Reddick's mattress and  
16 that the reporting officer smelled alcohol when he entered the cell  
17 shared by Reddick and petitioner. Id at 2. On that basis, the  
18 superior court found that: "[t]he hearing officer's findings (1)  
19 that the amount of alcohol and its odor made the cell occupant's  
20 testimony that [p]etitioner knew nothing of the pruno not credible  
21 and (2) that [p]etitioner was partially responsible for the alcohol  
22 is supported by some evidence in the record." Id at 2-3.

23           Petitioner filed a petition for writ of habeas corpus in  
24 both the California court of appeal and the California Supreme  
25 Court. The court of appeal summarily denied the petition on  
26 January 3, 2008. Doc #3, Ex E. On February 27, 2008, the  
27 California Supreme Court likewise summarily denied the petition.  
28 Doc #3, Ex G at 2. This federal petition for writ of habeas corpus

1 followed.

3 III

4 The Antiterrorism and Effective Death Penalty Act of 1996  
5 ("AEDPA"), codified under 28 USC § 2254, provides "the exclusive  
6 vehicle for a habeas petition by a state prisoner in custody  
7 pursuant to a state court judgment, even when the [p]etitioner is  
8 not challenging his underlying state court conviction." White v  
9 Lambert, 370 F3d 1002, 1009-10 (9th Cir 2004). Under AEDPA, this  
10 court may entertain a petition for habeas relief on behalf of a  
11 California state inmate "only on the ground that he is in custody  
12 in violation of the Constitution or laws or treaties of the United  
13 States." 28 USC § 2254(a).

14 The writ may not be granted unless the state court's  
15 adjudication of any claim on the merits: "(1) resulted in a  
16 decision that was contrary to, or involved an unreasonable  
17 application of, clearly established Federal law, as determined by  
18 the Supreme Court of the United States; or (2) resulted in a  
19 decision that was based on an unreasonable determination of the  
20 facts in light of the evidence presented in the State court  
21 proceeding." 28 USC § 2254(d). Under this deferential standard,  
22 federal habeas relief will not be granted "simply because [this]  
23 court concludes in its independent judgment that the relevant  
24 state-court decision applied clearly established federal law  
25 erroneously or incorrectly. Rather, that application must also be  
26 unreasonable." Williams v Taylor, 529 US 362, 411 (2000).

27 While circuit law may provide persuasive authority in  
28 determining whether the state court made an unreasonable

1 application of Supreme Court precedent, the only definitive source  
2 of clearly established federal law under 28 USC § 2254(d) rests in  
3 the holdings (as opposed to the dicta) of the Supreme Court as of  
4 the time of the state court decision. Williams, 529 US at 412;  
5 Clark v Murphy, 331 F3d 1062, 1069 (9th Cir 2003).

6 A federal district court reviews the last reasoned state  
7 court opinion. See Ylst v Nunnemaker, 501 US 797, 803 (1991).  
8 Where the state court decided an issue on the merits but provided  
9 no reasoned decision, the court conducts an independent review of  
10 the record to determine whether the state court was objectively  
11 unreasonable in its application of controlling federal law. See  
12 Delgado v Lewis, 223 F3d 976, 982 (9th Cir 2000).

13 While the superior court's reasoning in denying  
14 petitioner's petition for writ of habeas corpus was limited, it  
15 nonetheless was on the merits. Federal habeas relief will be  
16 granted if only, after an independent review of the record, the  
17 court determines that the state court was objectively unreasonable  
18 in its application of controlling federal law. See Himes v  
19 Thompson, 336 F3d 848, 853 (9th Cir 2003).

20  
21 IV

22 Petitioner seeks federal habeas corpus relief from the  
23 hearing officer's March 10, 2007 decision finding him guilty of  
24 possession of alcohol and the resultant loss of 120 days of good-  
25 time credits. Petitioner claims the decision violates his due  
26 process rights and argues that the decision was not supported by  
27 some evidence in the record. Doc #1 at 6.

28 Due process requires a certain level of procedural

1 protections before a prison inmate can be deprived of a protected  
2 liberty interest in good-time credits. Wolff v McDonnell, 418 US  
3 539 (1974). Those procedural protections include advance written  
4 notice to petitioner of the disciplinary charges; an opportunity by  
5 petitioner to call witnesses and present documentary evidence in  
6 his defense when doing so will not be hazardous to institutional  
7 safety or correctional goals; and a written statement by the fact  
8 finder of the evidence which he or she relied on and the reasons  
9 for the disciplinary action. Wolff, 418 US at 563-67. Part and  
10 parcel of the third requirement is that the decision to revoke  
11 good-time credits be supported by some evidence in the record so  
12 that the decision is not otherwise arbitrary. Superintendent v  
13 Hill, 472 US 445, 457 (1985). The "some evidence" standard is a  
14 reduced evidentiary standard that requires only a "modicum" of  
15 evidence to support the hearing officer's decision to revoke good-  
16 time credits. *Id.* Ascertaining whether the standard is met does  
17 not require an independent assessment of the record but only  
18 whether there is any evidence to support the conclusion reached by  
19 the hearing officer. *Id.* The Ninth Circuit has held that the  
20 evidence that supports the disciplinary action must carry some  
21 indicia of reliability. See Cato v Rushen, 824 F2d 703, 704-05  
22 (9th Cir 1987).

23           Here, the superior court relied on evidence in the record  
24 that showed that "four gallons of pruno were rolled up in the  
25 mattress on the [p]etitioner's cellmate's bunk" and that "[t]he  
26 reporting officer testified the odor of alcohol was evident when he  
27 entered the cell" to satisfy the "some evidence" due process  
28 requirement of Hill. Doc #3, Ex C at 2. Petitioner contends that

1 evidence of the amount of alcohol and its odor is not sufficient  
2 under Hill to support a finding that he was in possession of  
3 alcohol.

4           The essential elements of a crime of unlawful possession  
5 of a controlled substance are actual or constructive possession of  
6 the substance and knowledge of its presence and nature as a  
7 controlled substance. People v Rushing, 209 Cal App 3d 618, 621  
8 (4th Dist 1989). Actual or constructive possession is the right to  
9 exercise dominion or control over the contraband or the right to  
10 exercise such dominion and control over the place where it is  
11 found. Id at 622, citing People v Rice, 59 Cal App 3d 998, 1003  
12 (3rd Dist 1976). A defendant does not avoid conviction if his  
13 right to exercise dominion and control over the place where the  
14 contraband was located is shared with others. Id. In absence of  
15 direct evidence, the constructive possession doctrine has been used  
16 as circumstantial evidence to satisfy the Hill requirement. See  
17 Hamilton v O'Leary 976 F2d 341, 345 (7th Cir 1992); Mason v.  
18 Sargent, 898 F2d 679, 680 (8th Cir 1990).

19           In this case, petitioner shared the cell in which the  
20 pruno was found. While there may be a legitimate dispute as to  
21 whether the area between the mattress of petitioner's cellmate's  
22 bunk is an area of the cell where petitioner exercises dominion and  
23 control, according to prison policy defining possession, if  
24 contraband is found in an area "shared with another inmate, the  
25 inmates are jointly responsible with reasonable evidence both  
26 inmates were aware of its presence." Doc #3, Ex B at 16. This  
27 policy, along with the odor of alcohol detected by the reporting  
28 officer, is sufficient to establish "some evidence" that petitioner

1 was in constructive possession of the pruno found in his assigned  
2 cell. The superior court, therefore, was not objectively  
3 unreasonable in its application of clearly established federal law  
4 under Hill.

5           The second element of unlawful possession of a controlled  
6 substance is the knowledge of its presence and nature as a  
7 controlled substance. Rushing, 209 Cal App 3d at 621. The record  
8 indicates four factual considerations that support or negate the  
9 contention that petitioner had knowledge of the presence of alcohol  
10 in his cell: the slight odor of alcohol detected by the reporting  
11 officer; the amount of pruno found in Reddick's mattress;  
12 petitioner's assertion of innocence; and Reddick's immediate  
13 confession. Doc #3, Ex B at 17.

14           Here, the superior court found the hearing officer's  
15 determination that petitioner's denial of knowledge of the pruno  
16 was not credible was supported by some evidence on the record,  
17 specifically by the amount of alcohol found and its resulting odor.  
18 Doc #3, Ex C at 2. This court, however, does not weigh the  
19 evidence nor assess its credibility in determining whether there  
20 was some evidence to satisfy the Hill requirement. Hill, 472 US at  
21 455. Rather, this court must determine if there is some evidence  
22 on record that supports the officer's finding. Id at 458.

23           The record contained a report that "a slight odor of  
24 fermented fruit alcohol" could be detected in the cell; this was  
25 consistent with the quantity of alcohol found in the cell.  
26 Evidence of the odor of alcohol is sufficient to show that the  
27 hearing officer's finding that petitioner had knowledge of the  
28 presence of the alcohol was supported by "some evidence." The



1 court, therefore, need not consider the three remaining factual  
2 considerations that support or negate petitioner's knowledge. On  
3 this record, the superior court's ruling was not an objectively  
4 unreasonable application of clearly established federal law as set  
5 forth in Hill.

6  
7 V

8 For the reasons set forth above, the petition for writ of  
9 habeas corpus is DENIED.

10 The clerk shall enter judgment in favor of respondent and  
11 close the file.

12  
13 IT IS SO ORDERED.

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17 VAUGHN R WALKER  
18 United States District Chief Judge