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United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN KIEFER,

No. C 09-2640 MHP (pr)

Petitioner,

ORDER TO SHOW CAUSE

v.

A. HEDGEPETH, warden,

Respondent.

_____ /

INTRODUCTION

John Kiefer, a prisoner incarcerated at the Salinas Valley State Prison, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

BACKGROUND

In this habeas action, Kiefer challenges an August 7, 2008 prison disciplinary decision that resulted in the forfeiture of 121 days of time credits upon a finding that he was in possession of a controlled medication on June 30, 2008.

Kiefer alleges that he filed unsuccessful habeas petitions in state courts, including the California Supreme Court, before filing this action.

1 maker was biased are cognizable claims for due process violations. Those claims warrant a
2 response.

3 The petition also alleges that the disciplinary decision violated petitioner's Eighth
4 Amendment rights and his right to equal protection. The petition does not allege any facts
5 suggestive of an Eighth Amendment claim, and the discipline of a 121-day loss of time
6 credits does not amount to cruel and unusual punishment. Similarly, the petition does not
7 allege any facts suggestive of a violation of the Equal Protection Clause, as there is no
8 indication of different treatment of similarly situated people. City of Cleburne v. Cleburne
9 Living Center, 473 U.S. 432, 439 (1985) ("The Equal Protection Clause of the Fourteenth
10 Amendment commands that no State shall 'deny to any person within its jurisdiction the
11 equal protection of the laws,' which is essentially a direction that all persons similarly
12 situated should be treated alike."); Thornton v. City of St. Helens, 425 F.3d 1158, 1168 (9th
13 Cir. 2005) (evidence of different treatment of unlike groups does not support an equal
14 protection claim). The claims for an Eighth Amendment and Equal Protection Clause
15 violation are dismissed.

16 CONCLUSION

17 For the foregoing reasons,

18 1. The petition alleges cognizable due process claims based on insufficient
19 evidence to support the disciplinary decision and a biased decision-maker. All other claims
20 are dismissed.

21 2. The clerk shall serve by certified mail a copy of this order, the petition and all
22 attachments thereto upon respondent and respondent's attorney, the Attorney General of the
23 State of California. The clerk shall also serve a copy of this order on petitioner.

24 3. Respondent must file and serve upon petitioner, on or before **December 18,**
25 **2009**, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254
26 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent must
27 file with the answer a copy of the disciplinary decision records pertaining to the challenged
28 decision.

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4. If petitioner wishes to respond to the answer, he must do so by filing a traverse with the court and serving it on respondent on or before **January 29, 2010**.

5. Petitioner is responsible for prosecuting this case. He must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: October 29, 2009


Marilyn Hall Patel
United States District Judge