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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8 JASON PAGE,

No. C 09-4142 MHP (pr)

9 Petitioner,

**ORDER TO SHOW CAUSE**

10 v.

11 MATTHEW CATE, Secretary of the  
12 California Department of Corrections  
& Rehabilitation,

13 Respondent.  
14 \_\_\_\_\_/

15 **INTRODUCTION**

16 Jason Page, a prisoner currently incarcerated at the Substance Abuse Treatment  
17 Facility And State Prison in Corcoran, has filed a pro se petition for writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2241 challenging a disciplinary decision that occurred while he was  
19 incarcerated at Pelican Bay State Prison. The petition is now before the court for review  
20 pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

21 **BACKGROUND**

22 Page claimed in his petition that his due process rights were violated during  
23 disciplinary proceedings that stemmed from an incident on May 17, 2007. In the rules  
24 violation report (also known as a CDC-115, after the form number), Page was charged with  
25 battery on an inmate with a weapon. At a hearing on June 28, 2007, he was found guilty of  
26 the lesser offense of mutual combat with no serious injury and not guilty of battery with a  
27 deadly weapon. Petition, Exs. at 18. Page apparently was assessed a 90-day credit  
28 forfeiture. Id. He requests in his habeas petition that he be exonerated of the charges in the  
CDC-115 and that his time credits be restored. See Petition at 4.

1 **DISCUSSION**

2 A. Review of Petition

3 This court may entertain a petition for writ of habeas corpus "in behalf of a person in  
4 custody pursuant to the judgment of a State court only on the ground that he is in custody in  
5 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).  
6 A district court considering a petition will "award the writ or issue an order directing the  
7 respondent to show cause why the writ should not be granted, unless it appears from the  
8 application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

9 The process due in a prison disciplinary proceeding that results in the loss of time  
10 credits (assuming that such a loss of credits inevitably would affect the duration of the  
11 prisoner's confinement) includes written notice, time to prepare for the hearing, a written  
12 statement of decision, allowance of witnesses and documentary evidence when not unduly  
13 hazardous, and aid to the accused where the inmate is illiterate or the issues are complex.  
14 Wolff v. McDonnell, 418 U.S. 539, 564-70 (1974). Due process also requires that there be  
15 "some evidence" to support the disciplinary decision. Superintendent v. Hill, 472 U.S. 445,  
16 454 (1985). The Due Process Clause only requires that prisoners be afforded those  
17 procedures mandated by Wolff and its progeny; it does not require that a prison comply with  
18 its own, more generous procedures.

19 The petition is far from a model of clarity, but appears to allege several due process  
20 violations. It appears that Page is alleging that he was denied an investigative assistant, that  
21 he was denied an opportunity to present witnesses and documentary evidence, and that the  
22 evidence was insufficient to support the disciplinary decision. Liberally construed, these  
23 allegations state cognizable due process claims.

24 The petition also appears to complain about the handling of the inmate appeals Page  
25 filed after the disciplinary decision. That claim is dismissed. An incorrect decision on, or  
26 the mishandling of, an inmate appeal is not actionable as a due process violation.

27 See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (prisoner's claimed loss of a  
28 liberty interest in the processing of his appeals does not violate due process because prisoners

1 lack a separate constitutional entitlement to a specific prison grievance system). Page had no  
2 federal constitutional right to a properly functioning appeal system. An incorrect decision on  
3 an administrative appeal or failure to handle it in a particular way therefore did not amount to  
4 a violation of his right to due process.

5 The habeas petition also attempts to allege as a ground for relief a failure to protect  
6 from a risk of harm. Petition, p. 5. That allegation appears to be covered in one of Page's  
7 civil rights cases, see Page v. Willis, No. C 08-5610 MHP, in which Page alleged that  
8 sergeant Willis set him up to be attacked on May 17, 2007. In any event, the allegation does  
9 not challenge to the time credit loss that resulted from the CDC-115 issued for the event on  
10 May 17, 2007, and therefore is dismissed without prejudice to Page pursuing his claim in his  
11 civil rights action.

12 B. Miscellaneous Matters

13 After he filed his petition, Page filed an "ex parte application for full crediting of back  
14 time credits." The application is DENIED as premature and unnecessary. (Docket # 2.)  
15 Page will not be entitled to any court-ordered restoration of credits unless he prevails on his  
16 petition for writ of habeas corpus. The court has to wait for the parties to file their briefs  
17 before it can consider whether there was a constitutional violation, and only after it  
18 determines if there was a constitutional violation would the court reach the remedy question.  
19 Similarly, Page's "request for judgment of writ of habeas corpus" is DENIED as premature  
20 and unnecessary. (Docket # 9.) The court will consider the merits of the petition after  
21 respondent files an answer, and petitioner files a traverse.

22 In his traverse, petitioner should strive to present a coherent argument explaining how  
23 his due process rights were violated in the disciplinary proceedings. His petition had very  
24 little discussion and had numerous pages of exhibits. If he wants the court to consider  
25 exhibits, he should explain the significance of the exhibits in his traverse.

26 Petitioner named the warden at Pelican Bay, the director of the CDC&R, and inmate  
27 appeals chief N. Grannis as the respondents. The rules governing relief under 28 U.S.C. §  
28 2254 require a person in custody pursuant to the judgment of a state court to name the "state

1 officer having custody" of him as the respondent. Ortiz-Sandoval v. Gomez, 81 F.3d 891,  
2 894 (9th Cir. 1996) (quoting Rule 2(a) of the Rules Governing Habeas Corpus Cases Under  
3 Section § 2254). While the warden of the institution in which the petitioner is incarcerated is  
4 the typical respondent, the "state officer having custody" also may include "the chief officer  
5 in charge of state penal institutions." Ortiz-Sandoval, 81 F.3d at 894 (quoting Rule 2(a)  
6 advisory committee's note). Matthew Cate is the Secretary of the California Department of  
7 Corrections & Rehabilitation. As the chief officer in charge of California's prisons, he has  
8 custody. Thus, the court has sua sponte substituted Cate in as the respondent. N. Grannis  
9 has no custodial role over Page and therefore is dismissed. Pelican Bay State Prison warden  
10 Horel also is dismissed because he does not appear to be a proper respondent for a petition  
11 filed by a person incarcerated at another prison at the time of filing.

## 12 CONCLUSION

13 For the foregoing reasons,

14 1. The petition alleges cognizable due process claims that petitioner was denied  
15 an investigative assistant, that he was denied an opportunity to present witnesses and  
16 documentary evidence, and that the evidence was insufficient to support the disciplinary  
17 decision. All other claims are dismissed.

18 2. Respondents Horel and Grannis are dismissed. Matthew Cate, the Secretary of  
19 the California Department of Corrections & Rehabilitation is substituted in as the respondent.

20  
21 3. 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 4. Respondent must file and serve upon petitioner, on or before **October 1, 2010**,  
25 an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,  
26 showing cause why a writ of habeas corpus should not be issued. Respondent must file with  
27 the answer a copy of the disciplinary decision records pertaining to the challenged decision.

28 5. If petitioner wishes to respond to the answer, he must do so by filing a traverse

1 with the court and serving it on respondent on or before **November 5, 2010**.

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

6         7.         Petitioner's "ex parte application for full crediting of back time credits" and  
7 "request for judgment of writ of habeas corpus" are DENIED. (Docket # 2, # 9.)

8                 IT IS SO ORDERED.

9 DATED: July 23, 2010

  
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Marilyn Hall Patel  
United States District Judge

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