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

PHUOC VONG,

No. C 09-5851 WHA (PR)

Petitioner,

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS**

v.

KATHLEEN ALLISON, Warden,

Respondent.

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**INTRODUCTION**

Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus challenging disciplinary proceedings at his prison at which he was found guilty of possessing a weapon and had 360 of his “good time” credits taken away. Respondent was ordered to show cause why the petition should not be granted based upon the three cognizable claims. Respondent moved to dismiss the petition because the third claim – that petitioner was not able to present all of the evidence he wished to present at his disciplinary hearing – was not exhausted. The motion was granted and petitioner was directed to decide whether to seek a stay while he exhausted the third claim or to abandon the third claim proceed only with the two exhausted claims. He chose the latter course. Respondent has filed an answer and a memorandum of points and authorities in support of it in which he argues that the two exhausted claims are without merit. The case was then reassigned to the undersigned. For the reasons set forth below, the petition is **DENIED**.



1 Section 2932(a)(5) of the California Penal Code in order for prison officials to impose  
2 discipline. Whether or not this state law requirement was satisfied does not matter here,  
3 however, because federal habeas relief is only available on the basis of a violation of federal  
4 law, not state law. 28 U.S.C. § 2254(a); *Swarthout v. Cooke*, 131 S. Ct. 859, 861-62 (2011).  
5 Federal law, specifically the federal constitutional right to due process, only requires “some  
6 evidence” in the record from which the prison officials’ conclusion could be deduced. *See*  
7 *Superintendent v. Hill*, 472 U.S. 445, 454-55 (1985); *Burnsworth v. Gunderson*, 179 F.3d 771,  
8 773-74 (9th Cir. 1999). Consequently, federal habeas relief is not available on the grounds that  
9 the disciplinary finding was not supported by a preponderance of the evidence.

10 Petitioner alternatively argues that there was not even “some evidence” supporting the  
11 finding that he was in possession of a weapon. To meet the “some evidence” standard, an  
12 examination of the entire record is not required nor is an independent assessment of the  
13 credibility of witnesses or weighing of the evidence. *Hill*, 472 U.S. at 455. The relevant  
14 question is whether there is any evidence in the record that could support the conclusion  
15 reached by the disciplinary board. *Ibid*. Revocation of good-time credits is not comparable to a  
16 criminal conviction and neither the amount of evidence necessary to support such a conviction,  
17 nor any other standard greater than some evidence, applies. *Id.* at 456. The Ninth Circuit  
18 additionally has held that there must be some indicia of reliability of the information that forms  
19 the basis for prison disciplinary actions. *Cato v. Rushen*, 824 F.2d 703, 704-05 (9th Cir. 1987).

20 The state courts reasonably found that there was “some evidence” that petitioner  
21 possessed an inmate-manufactured weapon. (federal habeas relief is not available if state courts  
22 reasonably applied correct federal standard) (citing 28 U.S.C. 2254(d)(1)). Two officers  
23 reported that they saw petitioner and Huynh kneeling and apparently digging the dirt in the  
24 prison yard, and when they searched that area they found a weapon buried in the dirt. From this  
25 evidence, prison officials could conclude that petitioner and Huynh had either buried the  
26 weapon there or that they knew the weapon was there and they were attempting to retrieve it.  
27 The evidence had sufficient indicia of reliability insofar as it consisted of first-hand  
28 observations by two officers who corroborated each other. *See or Cf. Cato v. Rushen*, 824 F.2d

1 703, 704-05 (9th Cir. 1987) (uncorroborated hearsay statement of confidential informant with  
2 inconclusive polygraph not sufficiently reliable); *see Zimmerlee v. Keeney*, 831 F.2d 183, 186-  
3 87 (9th Cir. 1987) (reliability may be established by among other things corroboration or  
4 firsthand knowledge of prison officials). Consequently, there was enough evidence to meet the  
5 low threshold of “some evidence” supporting the decision that petitioner possessed an inmate-  
6 manufactured weapon.

7         Petitioner complains that the officers stated in their reports only that petitioner  
8 “appeared” to be digging, not that they actually saw him digging. He also cites the fact that no  
9 dirt was found on petitioner’s hands or fingernails, and that no witnesses saw the officers  
10 “actually retrieve” the weapon from the area where petitioner had been squatting. The absence  
11 of such evidence does not preclude his possession of the weapon. That he “appeared” to the  
12 officers to be digging in the dirt would be consistent with the officers actually observing him  
13 digging, or having reason to believe he had been digging. The absence of dirt on his hands does  
14 not preclude his possession of the weapon as another inmate might have buried it for him, or he  
15 could have used a stick or another object to dig. Similarly, the fact that no witnesses saw the  
16 officers retrieve the weapon does not preclude their having done so. In short, the absence of  
17 stronger evidence that he possessed the weapon does not mean there was not some evidence  
18 from which prison officials could conclude that he did.

19         Petitioner argues that there is only a 1.5% chance that he is guilty because over 500  
20 other inmates had access to the area where the weapon was found. This ignores the fact that  
21 petitioner was one of only few inmates squatting or kneeling in the area of the weapon  
22 immediately before it was found, and one of only two whom officers reported were digging in  
23 the area. He also argues that he and Huynh could not have both possessed the weapon because  
24 only one weapon was found. However, more than one person can plainly share access to,  
25 knowledge of, and control of a single object.

26         Petitioner has not shown that the state courts erred in finding “some evidence” to  
27 support the disciplinary decision of prison officials. Consequently, he is not entitled to federal  
28 habeas relief.

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**CONCLUSION**

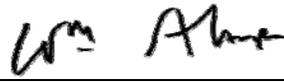
The petition for a writ of habeas corpus is **DENIED**.

Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to rule on whether a petitioner is entitled to a certificate of appealability in the same order in which the petition is denied. Petitioner has failed to make a substantial showing that his claims amounted to a denial of his constitutional rights or demonstrate that a reasonable jurist would find the denial of his claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this case.

The clerk shall enter judgment and close the file.

**IT IS SO ORDERED.**

Dated: November 28, 2012.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE