

\*E-Filed 5/7/13\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ENRIQUE A. GODOY,

Petitioner,

v.

RANDY GROUNDS, Warden,

Respondent.

No. C 12-5042 RS (PR)

**ORDER REOPENING ACTION;****ORDER DISMISSING PETITION  
WITH LEAVE TO AMEND**

This federal habeas corpus action was dismissed because petitioner failed to pay the filing fee. The fee has now been paid, and petitioner moves for relief from the judgment, which the Court construes as a motion to reopen the action (Docket No. 13). So construed, it is GRANTED. The action is hereby REOPENED, and the Clerk is directed to amend the docket accordingly. The judgment (Docket No. 11), and the order of dismissal (Docket No. 10) are VACATED. The Clerk shall terminate Docket No. 13.

The petition, which contains two claims, is DISMISSED with leave to amend. Petitioner's Eighth Amendment claim regarding the conditions of confinement should be brought in a civil rights, not a habeas, action. Accordingly, this claim is DISMISSED

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1 without prejudice. If petitioner wishes to pursue this claim, he must bring it by way of a civil  
2 rights action.

3 The second claim is DISMISSED with leave to amend. Petitioner claims that  
4 respondent violated his due process rights in a rules violation report proceeding. It is not  
5 clear whether petitioner lost time credits because of such proceeding. In his amended  
6 petition, he must tell the Court whether he lost any time credits and, if he did lose credits,  
7 how many.

8 **Petitioner shall file an amended petition addressing the above-listed concerns on**  
9 **or before June 15, 2013.** The amended petition must include the caption and civil case  
10 number used in this order (12-5042 RS (PR)) and the words AMENDED PETITION on the  
11 first page. Because an amended petition completely replaces the previous petitions,  
12 petitioner must include in his first amended petition all the claims he wishes to present,  
13 including the ineffective assistance of counsel claim found cognizable above. Petitioner may  
14 not incorporate material from the prior petition by reference. Failure to file an amended  
15 petition in accordance with this order will result in dismissal of this action with prejudice for  
16 failure to prosecute under Federal Rule of Civil Procedure 41(b).

17 **IT IS SO ORDERED.**

18 DATED: May 7, 2013

  
RICHARD SEEBORG  
United States District Judge