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United States District Court
Northern District of California

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

JOHN DUNN,

 Petitioner,

 v.

GARY SWARTHOUT,

 Respondent.

Case No.: C 14-0934 JSC (PR)

**ORDER TO SHOW CAUSE;
DENYING MOTION FOR
RECONSIDERATION; GRANTING
LEAVE TO PROCEED IN FORMA
PAUPERIS**

(Dkt. 2, 9)

Petitioner, a prisoner of the State of California currently incarcerated at San Quentin State Prison and proceeding pro se, filed a petition for a writ of habeas corpus challenging a disciplinary report issued by officials at his prior prison, California State Prison -- Solano.¹ He originally filed this case in the Eastern District of California, but it was transferred to this Court. He has applied for leave to proceed in forma pauperis.

BACKGROUND

In 2012, Petitioner was incarcerated at California State Prison -- Solano, where, following a disciplinary hearing, prison officials issued a "Rules Violation Report" ("RVR") finding Petitioner guilty of instigating a riot. He was assessed a loss of 90 days of time

¹ Petitioner has consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (Dkt. No. 11.)

1 credits. Petitioner also alleges that this disciplinary finding led to his being denied parole. He
2 challenged the discipline in habeas petitions to the Solano County Superior Court, the
3 California Court of Appeal, and the California Supreme Court. All three petitions were
4 denied.

5 DISCUSSION

6 I. Standard of Review

7 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in
8 custody pursuant to the judgment of a State court only on the ground that he is in custody in
9 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It
10 shall “award the writ or issue an order directing the respondent to show cause why the writ
11 should not be granted, unless it appears from the application that the applicant or person
12 detained is not entitled thereto.” *Id.* § 2243.

13 II. Legal Claims

14 As grounds for federal habeas relief, Petitioner claims that his right to due process was
15 violated because: (1) he was not allowed to call witnesses at the disciplinary hearing; (2) an
16 investigating prison official failed to assist him in calling witnesses; (3) there was no evidence
17 of his guilt and the hearing officer was biased against him; and (4) he was denied a staff
18 member to assist him. When liberally construed, these claims are sufficient to warrant a
19 response from Respondent. *See Superintendent v. Hill*, 472 U.S. 445, 454 (1985); *Wolff v.*
20 *McDonnell*, 418 U.S. 539, 556-70 (1974).

21 III. Motion for Reconsideration

22 Petitioner has filed a motion to reconsider the transfer of this case from the Eastern
23 District of California to this Court. He argues it should be transferred back to the Eastern
24 District because the disciplinary proceedings took place at CSP Solano, which lies within the
25 venue of the Eastern District. When, as here, a federal habeas petition is directed to the
26 manner in which a sentence is being executed, e.g., if it involves parole or time credits claims,
27 the district of confinement is the preferable forum. *See Habeas L.R. 2254-3(b)(2)*; *Dunne v.*
28 *Henman*, 875 F.2d 244, 249 (9th Cir. 1989). Here, the petition challenges disciplinary

1 findings that resulted in Petitioner's loss of time credits and were allegedly used to deny him
2 parole. As such, the petition challenges the execution of his sentence. As Petitioner is
3 confined at San Quentin State Prison, which lies within the venue of the Northern District of
4 California, this Court is the preferable forum. Accordingly, his motion for reconsideration is
5 DENIED.

6 CONCLUSION

7 For the foregoing reasons and for good cause shown,

8 1. The Clerk shall serve a Magistrate Judge jurisdiction consent form, a copy of this
9 Order, and the petition, and all attachments thereto, on Respondent and Respondent's
10 attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of
11 this Order on Petitioner.

12 2. Respondent shall complete and file the Magistrate Judge jurisdiction consent form
13 within **ninety-one (91) days** of the date this Order is issued. If Respondent consents to a
14 Magistrate Judge's jurisdiction, then Respondent shall file with the Court and serve on
15 Petitioner, within **ninety-one(91) days** of the date this Order is issued, an answer conforming
16 in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a
17 writ of habeas corpus should not be granted. Respondent shall file with the answer and serve
18 on Petitioner a copy of all portions of the prison disciplinary proceedings that are relevant to a
19 determination of the issues presented by the petition. If Petitioner wishes to respond to the
20 answer, he shall do so by filing a traverse (a reply) with the Court and serving it on
21 Respondent within **twenty-eight (28) days** of the date the answer is filed.

22 3. Respondent may, within **ninety-one (91) days** of the date this Order is issued, file a
23 motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory
24 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files
25 such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or
26 statement of non-opposition within **twenty-eight (28) days** of the date the motion is filed, and
27 Respondent shall file with the Court and serve on Petitioner a reply within **fourteen (14) days**
28 of the date any opposition is filed.

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4. It is Petitioner’s responsibility to prosecute this case. Petitioner must keep the Court informed of any change of address by filing a separate paper captioned “Notice of Change of Address.” He 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).

5. The motion for leave to proceed in forma pauperis (dkt. 2) is GRANTED. The motion for reconsideration (dkt. 9) is DENIED.

IT IS SO ORDERED.

Dated: March 25, 2014



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE