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

PAUL SAMUEL JOHNSON, No. C 11-02058 CW (PR)
Plaintiff, ORDER OF DISMISSAL;
TERMINATING ALL PENDING MOTIONS
v.
WARDEN FONG, et al.,
Defendants.

Plaintiff, a state prisoner currently incarcerated at California State Prison - Solano, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. Plaintiff's complaint is now before the Court for review pursuant to 28 U.S.C. § 1915A.

BACKGROUND

Plaintiff complains that on April 4, 2009, when he was incarcerated at San Quentin State Prison (SQSP), a correctional officer authored a false rules violation report (RVR) charging Plaintiff with threatening him. As a result, in May 2009 Plaintiff was found guilty of the charge at a disciplinary hearing, sentenced to a term in administrative segregation in the security housing unit (SHU) and forfeited 150 days of time credits.

Shortly after the hearing, Plaintiff was released on parole on May 19, 2009. He subsequently was arrested in June 2009 and returned to SQSP on November 17, 2009, after being found in violation of parole and guilty of a new criminal offense. When Plaintiff returned to SQSP, the Institutional Classification Committee (ICC) elected to reimpose the SHU term that had been suspended when Plaintiff was released on parole; on January 13,

1 2010, the ICC suspended the remainder of the term and released
2 Plaintiff to the general population.

3 Plaintiff claims he should not have been found guilty at the
4 May 2009 disciplinary hearing, and seeks the restoration of the
5 forfeited 150 days of time credits, the removal of the RVR from his
6 prison file and damages for the time he spent in the SHU because of
7 the finding of guilt.

8 Additionally, Plaintiff asks the Court to "fix the unfit
9 conditions" in the SHU at SQSP by, for example, removing the bugs
10 and rats and fixing the broken lights. Compl. at 3 ¶ V.

11 DISCUSSION

12 I. Standard of Review

13 A federal court must conduct a preliminary screening in any
14 case in which a prisoner seeks redress from a governmental entity
15 or officer or employee of a governmental entity. 28 U.S.C.
16 § 1915A(a). In its review, the court must identify any cognizable
17 claims and dismiss any claims that are frivolous, malicious, fail
18 to state a claim upon which relief may be granted or seek monetary
19 relief from a defendant who is immune from such relief. Id.
20 § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
21 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
22 1988).

23 To state a claim under 42 U.S.C. § 1983, a plaintiff must
24 allege two essential elements: (1) that a right secured by the
25 Constitution or laws of the United States was violated, and
26 (2) that the alleged violation was committed by a person acting
27 under the color of state law. West v. Atkins, 487 U.S. 42, 48
28 (1988).

1 II. Plaintiff's Claims

2 Plaintiff's allegations concerning his alleged unlawful
3 disciplinary proceeding do not state a claim for relief under
4 § 1983. As an initial matter, it appears that Plaintiff's request
5 for the restoration of his forfeited time credits is moot because
6 the attachments to Plaintiff's complaint indicate that Plaintiff
7 was not assessed any credit loss when his new eligible release
8 dates were calculated upon his return to SQSP in November 2009.

9 Further, even if Plaintiff's request is not moot, it is not
10 cognizable in a civil rights action because the request is premised
11 upon a challenge to the duration of Plaintiff's confinement.
12 "Federal law opens two main avenues to relief on complaints related
13 to imprisonment: a petition for habeas corpus, 28 U.S.C.
14 § 2254, and a complaint under the Civil Rights Act of 1871, Rev.
15 Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the
16 lawfulness of confinement or to particulars affecting its duration
17 are the province of habeas corpus." Hill v. McDonough, 547 U.S.
18 573, 579 (2006) (internal quotation and citation omitted). Thus,
19 to the extent a prisoner maintains he is entitled to "immediate or
20 speedier release" from confinement, such a claim may be asserted
21 only in a petition for a writ of habeas corpus. See Skinner v.
22 Switzer, 131 S. Ct. 1289, 1293 (2011)(internal citation and
23 quotation omitted).

24 If Plaintiff wishes to directly challenge the disciplinary
25 action that resulted in the forfeiture of time credits, he must do
26 so in a petition for a writ of habeas corpus after he has exhausted
27 his state judicial remedies. See Young v. Kenny, 907 F.2d 874,
28 876-78 (9th Cir. 1990). Accordingly, this claim is DISMISSED

1 without prejudice to Plaintiff's bringing a habeas corpus action
2 once state remedies have been exhausted.

3 Additionally, Plaintiff cannot pursue any claim for damages or
4 injunctive relief that, if successful, necessarily would call into
5 question the validity of his conviction or confinement. Heck v.
6 Humphrey, 512 U.S. 477 (1994), holds that in order to state a claim
7 for damages for an allegedly unconstitutional conviction or term of
8 imprisonment, or for other harm caused by actions whose
9 unlawfulness would render a conviction or sentence invalid, a
10 plaintiff asserting a violation of 42 U.S.C. § 1983 must prove that
11 the conviction or sentence has been reversed or declared invalid.
12 Id. at 486-87. If success in the § 1983 lawsuit would necessarily
13 demonstrate the invalidity of the confinement or its duration, the
14 § 1983 lawsuit is barred, irrespective of whether the plaintiff
15 seeks monetary damages or equitable relief. Wilkinson v. Dotson,
16 544 U.S. 74, 81 (2005).

17 Heck bars a claim of unconstitutional deprivation of time
18 credits because such a claim necessarily calls into question the
19 lawfulness of the plaintiff's continuing confinement, i.e., it
20 implicates the duration of the plaintiff's sentence. See Sheldon
21 v. Hundley, 83 F.3d 231, 233 (8th Cir. 1996); cf. Ramirez v.
22 Galaza, 334 F.3d 850, 858-59 (9th Cir. 2003) (where a claim would,
23 if successful, "necessarily accelerate" the prisoner's release on
24 parole, Heck applies). Heck also bars a claim for using the wrong
25 Wolff v. McDonnell, 418 U.S. 539 (1974), procedures in a
26 disciplinary hearing that resulted in the deprivation of time
27 credits if "the nature of the challenge to the procedures [is] such
28 as necessarily to imply the invalidity of the judgment." Edwards

1 v. Balisok, 520 U.S. 641, 645 (1997).

2 Here, Plaintiff claims he was denied the opportunity to
3 present at his disciplinary hearing an audiotape that would have
4 shown that the correctional officer who wrote the RVR was lying
5 about Plaintiff's having threatened him. If Plaintiff succeeded on
6 his claim for damages, that success would imply the invalidity of
7 the discipline imposed, i.e., the loss of time credits. Therefore,
8 Plaintiff's claim for damages and for the removal of the RVR from
9 his prison file are DISMISSED without prejudice to Plaintiff's
10 bringing those claims in a new action if the credit forfeiture is
11 reversed or declared invalid.

12 Finally, Plaintiff seeks injunctive relief to remedy the
13 conditions of confinement in the SHU at SQSP. Because Plaintiff no
14 longer is incarcerated at SQSP, however, his request is DISMISSED
15 as moot. See Dilley v. Gunn, 64 F.3d 1365, 1368-69 (9th Cir.
16 1995). Additionally, Plaintiff cannot proceed with a claim for
17 damages for the alleged unlawful conditions of his confinement in
18 the SHU because it is clear from the complaint and attachments
19 thereto that he did not exhaust his administrative remedies before
20 he filed suit.

21 No confined inmate may bring an action with respect to prison
22 conditions under 42 U.S.C. § 1983 "until such administrative
23 remedies as are available are exhausted." 42 U.S.C. § 1997e(a).
24 The exhaustion requirement is mandatory and must be completed
25 before the prisoner files suit. Porter v. Nussle, 534 U.S. 516,
26 524 (2002). If it is clear from the record that the prisoner has
27 conceded that he did not exhaust administrative remedies, a claim
28 may be dismissed without prejudice. See Wyatt v. Terhune, 315 F.3d

1 1108, 1120 (9th Cir. 2003).

2 Plaintiff states that he has attached to his complaint the
3 administrative appeals that show he exhausted his administrative
4 remedies. A thorough review of the complaint and attachments
5 thereto demonstrates, however, that Plaintiff exhausted through the
6 Director's level of review only his claim concerning the validity
7 of his disciplinary proceeding, and that he did so in 2010, after
8 his return to prison in November 2009. Nowhere in his complaint
9 does Plaintiff allege facts or provide documentation showing that
10 in the approximately six weeks between his April 4, 2009 placement
11 in the SHU and his May 19, 2009 release on parole, or at any time
12 since his return to prison in November 2009, he exhausted through
13 the Director's level of review a claim regarding the conditions of
14 his confinement in the SQSP SHU. Accordingly, this claim is
15 DISMISSED without prejudice for failure to exhaust administrative
16 remedies. Plaintiff may file a new action raising this claim if he
17 first exhausts the claim through the administrative appeals
18 process.

19 CONCLUSION

20 For the foregoing reasons, Plaintiff's claims are DISMISSED
21 WITHOUT PREJUDICE.

22 The Clerk of the Court shall enter judgment, close the file,
23 and terminate any pending motions.

24 IT IS SO ORDERED.

25 Dated: 10/25/2011



26 CLAUDIA WILKEN
27 UNITED STATES DISTRICT JUDGE
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 (PC) JOHNSON et al,
5 Plaintiff,

Case Number: CV11-02058 CW

CERTIFICATE OF SERVICE

6 v.

7 FONG ET AL et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on October 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Paul Samuel Johnson F 41309
16 California State Prison - Solano
17 P.O. Box 4000
18 9 Building #148 low
19 2100 Peabody Road
20 Vacaville, CA 95969-4000

21 Dated: October 25, 2011

22 Richard W. Wieking, Clerk
23 By: Nikki Riley, Deputy Clerk
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