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United States District Court
For the Northern District of California

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

JOHN HARDNEY,)	No. C 11-04712 EJD (PR)
)	
Petitioner,)	ORDER DENYING PETITION FOR A
)	WRIT OF HABEAS CORPUS;
v.)	DENYING CERTIFICATE OF
)	APPEALABILITY
)	
D. ADAMS, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner, seeks an administrative writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the decision of the Pelican Bay State Prison (“PBSP”) that resulted in the loss of good time credits. Finding the petition stated a cognizable claim under § 2254, the Court ordered Respondent to show cause why the petition should not be granted. Respondent filed an answer, and Petitioner filed a traverse.

BACKGROUND

On May 22, 2009, Officer Castro issued a Rules Violation Report (“RVR”) to Petitioner for “Willfully Delaying, Obstructing a Peace Officer” when he refused to accept Inmate Stacker as a compatible cell-mate. (Pet. Ex. A.) A disciplinary hearing was held on May 31, 2003. Prior to the hearing, Petitioner was provided

1 with notice of the hearing and of the charges against him. (Pet. Ex. A at 3.)
2 Petitioner pled not guilty, but based upon the evidence presented, including the
3 RVR, the Investigative Employee Report, and a Mental Health Chrono, Petitioner
4 was found guilty and assessed a ninety days forfeiture of good time credits and thirty
5 days loss of privileges. (Id.) Petitioner did not request any witnesses. (Id. at 4.)

6 Petitioner filed a habeas petition in the state superior court which was denied
7 on March 16, 2011. His petitions to the state appellate and supreme courts were also
8 denied. Petitioner filed the instant federal habeas petition on September 7, 2011.

10 DISCUSSION

11 A. Standard of Review

12 This court may entertain a petition for writ of habeas corpus "in behalf of a
13 person in custody pursuant to the judgment of a State court only on the ground that
14 he is in custody in violation of the Constitution or laws or treaties of the United
15 States." 28 U.S.C. § 2254(a). The petition may not be granted with respect to any
16 claim that was adjudicated on the merits in state court unless the state court's
17 adjudication of the claim: "(1) resulted in a decision that was contrary to, or
18 involved an unreasonable application of, clearly established Federal law, as
19 determined by the Supreme Court of the United States; or (2) resulted in a decision
20 that was based on an unreasonable determination of the facts in light of the evidence
21 presented in the State court proceeding." 28 U.S.C. § 2254(d).

22 "Under the 'contrary to' clause, a federal habeas court may grant the writ if
23 the state court arrives at a conclusion opposite to that reached by [the Supreme]
24 Court on a question of law or if the state court decides a case differently than [the]
25 Court has on a set of materially indistinguishable facts." Williams v. Taylor, 529
26 U.S. 362, 412-13 (2000). "Under the 'unreasonable application' clause, a federal
27 habeas court may grant the writ if the state court identifies the correct governing
28 legal principle from [the Supreme Court's] decisions but unreasonably applies that

1 principle to the facts of the prisoner’s case.” Id. at 413.

2 “[A] federal habeas court may not issue the writ simply because that court
3 concludes in its independent judgment that the relevant state-court decision applied
4 clearly established federal law erroneously or incorrectly.” Id. at 411. A federal
5 habeas court making the “unreasonable application” inquiry should ask whether the
6 state court’s application of clearly established federal law was “objectively
7 unreasonable.” Id. at 409.

8 B. Legal Claims

9 According to Petitioner, he spoke to Inmate Stacker who agreed to “cell-up”
10 with him after Inmate Curtis refused. (Pet. Attach. at 2.) Petitioner asserts that
11 when an investigative employee interviewed Inmates Stacker and Curtis, neither of
12 them stated that Petitioner had refused to cell-up with him. (Id.) Petitioner claims
13 that the hearing officer failed to consider the investigating employee’s report and
14 that he was wrongfully found guilty based solely on the reporting officer’s report.
15 Petitioner claims that there is no evidence to support the allegation that he refused to
16 take a cell-mate, and that therefore the guilty finding must be reversed.

17 An inmate in California is entitled to due process before being disciplined
18 when the discipline imposed will inevitably affect the duration of his sentence. See
19 Sandin v. Conner, 515 U.S. 472, 484, 487 (1995). The process due in such a prison
20 disciplinary proceeding includes written notice of the charges, time to prepare for
21 the hearing, a written statement of decision, allowance of witnesses and
22 documentary evidence when not unduly hazardous to institutional safety or
23 correctional goals, and aid to the accused where the inmate is illiterate or the issues
24 are complex. Wolff v. McDonnell, 418 U.S. 539, 564-67 (1974).

25 The revocation of good-time credits does not comport with the minimum
26 requirements of procedural due process in Wolff unless the findings of the prison
27 disciplinary decision-maker are supported by some evidence in the record.

28 Superintendent v. Hill, 472 U.S. 445, 454 (1985). There must be “some evidence”

1 from which the conclusion of the decision-maker could be deduced. Id. at 455. An
2 examination of the entire record is not required nor is an independent assessment of
3 the credibility of witnesses or weighing of the evidence. Id. “[T]he relevant
4 question is whether there is any evidence in the record that could support the
5 conclusion reached” by the disciplinary decision-maker. Id. This standard is
6 considerably lower than that applicable in criminal trials. See id. at 456.

7 The record reveals, and Petitioner does not dispute, that Petitioner received
8 written notice of the charges more than twenty-four hours prior to the hearing and
9 that there was a written statement as to the findings and reasoning of the disciplinary
10 decision. (Pet. Ex. A.) Petitioner was assigned an investigative employee to whom
11 he did not object. (Id.) A staff assistant was not assigned at the hearing because
12 Petitioner speaks English and is literate, the issues were not complex, and a
13 confidential relationship was not required. (Id.) With respect to witnesses,
14 Petitioner did not request any. (Id.)

15 The evidence of Petitioner’s guilt consisted of a detailed statement by the
16 reporting officer who had advised Petitioner that per departmental policy, he was
17 expected to double-cell and accept housing assignment as directed by the staff. (Pet.
18 Ex. A at 1.) According to the reporting officer’s report, Petitioner was offered an
19 opportunity to house with Inmate Stacker, which Petitioner refused. (Id. at 2.)
20 Although Petitioner asserts that the investigative employee’s interview of Inmates
21 Curtis and Stacker reveals that he never refused to be housed with either of them, the
22 state court in rejecting this claim noted that the investigative report does not
23 affirmatively confirm that Petitioner actually accepted Inmate Stacker as a cell
24 partner. (Pet. Attach.; Resp’t Ex. 6 at 2.) The state court also pointed out that
25 because Inmate Stacker was not requested by Petitioner as a witness at the RVR
26 hearing, “there was no opportunity for him to expand on such line of questioning.”
27 (Id. at 2.) Accordingly, there was sufficiently reliable evidence to find Petitioner
28 guilty of the charged offense. See Hill, 472 U.S. at 454.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,
Petitioner,

Case Number: CV11-04712 EJD

CERTIFICATE OF SERVICE

v.

D. ADAMS, Warden,
Respondent.

_____/

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

That on 4/23/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

John Hardney D-00599
California State Prison - Sacramento
P. O. Box 290066
Respresa, CA 95671

Dated: 4/23/2013

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk