UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CARLOS ESCAMILLA, Petitioner, vs. GEORGE GIURBINO, Warden, Respondent.	CASE NO. 05-CV-1936-H (BLM) **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Carlos Escamilla is a state prisoner serving a life sentence without possibility of parole and an additional one year sentence to run consecutively. Proceeding *pro se*, he filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on October 11, 2005. (Doc. No. 1.) In his petition, he challenges the results of a prison disciplinary proceeding. Respondent filed an answer to the petition on February 10, 2006. (Doc. No. 9.) On February 28, 2006, Petitioner filed a traverse. (Doc. No. 12.) Magistrate Judge Major issued a Report and Recommendation ("R&R") on April 27, 2006, recommending that the Court deny Petitioner's writ for habeas corpus relief without prejudice to permit him to file an amended complaint under 42 U.S.C. § 1983. (Doc No. 13.) Neither party filed any objections to the R&R. After careful consideration, the Court finds that Petitioner may bring his claims in a habeas proceeding, and the Court DENIES the petition with prejudice.

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Background

A state court jury convicted Petitioner of first degree murder under California Penal Code § 187(a), and it found that he personally used a dangerous weapon within the meaning of California Penal Code § 12022(b). (California Court of Appeal's Order Affirming Conviction, Lodgment 11 at 2.)[1] Petitioner was sentenced to life in prison without possibility of parole, plus one year to run consecutively for personal use of a dangerous weapon. (Id.; Los Angeles County Superior Court Minute Order, Lodgment 1 at 1.)

On November 21, 2003, a group of inmates attacked a group of prison staff members. (Petition at 2; Rules Violation Report, Lodgment 2 at 1.) Correctional Officer Silva identified Petitioner as part of the group of prisoners involved in the assault. (California Court of Appeal Order Denying Petition for Writ of Habeas Corpus, Lodgment 8 at 1.) Petitioner was charged with a rules violation under California Code of Regulations, title 15, § 3005(c), for attempted murder of a peace officer. (Id.) On December 12, 2004, a senior hearing officer found Petitioner not guilty of attempted murder of a peace officer, but found him guilty of the lesser included offense of participating in a riot. (Id.) The hearing officer assessed a 90 day forfeiture of credits and referred Petitioner to the Institutional Classification Committee with a recommendation for housing in the Segregated Housing Unit. (Id. at 1-2.) The chief disciplinary officer affirmed the hearing officer's findings and disposition. (Id. at 2.)

Petitioner filed an administrative appeal in which he argued that the decision was not supported by the evidence. (Petition, Ex. A (Inmate Appeal Form) at 1-3.) In particular, he argued that he was Salvadoran and was not involved in the Southern Mexican prison gang inmate attack, he was not in the vicinity of the attack, and unlike the other inmates involved in the attack, he suffered no injuries. (Id. at 2-3.) The Chief

[1] This Court presumes the state court's factual determinations are correct absent clear and convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1); Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

Deputy Warden at Calipatria State Prison denied his appeal. (Second Level Appeal Response, Lodgment 3 at 3-6.)

Following denial of his administrative appeal, Petitioner filed a petition for a writ of habeas corpus in the Imperial County Superior Court. (Petition for Writ of Habeas Corpus Filed in Imperial County Superior Court, Lodgment 5.) In his petition, he alleged that his due process rights were violated because the evidence was insufficient to support the disciplinary conviction and because prison officials improperly denied his request for videotape and photographs of the riot to demonstrate his position at the time of the attack. (Id.) The Imperial County Superior Court denied the petition. (Imperial County Superior Court Order Denying Writ of Habeas Corpus, Lodgment 6.)

Next, Petitioner filed an appeal of the denial of the writ in the California Court of Appeal. (Petition for Writ of Habeas Corpus Filed in California Court of Appeal, Lodgment 7.) Because state case law mandates that a petitioner can only seek review of his claims by filing a new petition in the Court of Appeal, the court treated the appeal as an original proceeding raising the same issues as the petition filed in the Superior Court. (California Court of Appeal Order Denying Petition, Lodgment 8 at 2-3.) Reaching the merits of the petition, the California Court of Appeal denied the petition, stating:

> Escamilla did not raise the claim that the hearing officer improperly denied his request for videotape and photographs in the administrative appeal. The claim may not be raised in the first instance by way of habeas corpus.
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> "[T]he requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke . . . credits. This standard is met if 'there was some evidence from which the conclusion of the administrative tribunal could be deduced. . . .' [Citation.] Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board. [Citation.]" (*Superintendent v. Hill* (1985) 472 U.S. 445, 455-456.) "Some evidence" supports the determination that Escamilla participated in the riot because the correctional officer positively identified him as part of the group of inmates assaulting the staff.
>
> The petition is denied.

(Id. at 3.)

Petitioner filed a petition for writ of habeas corpus in the California Supreme Court, which the court denied without opinion on September 21, 2005. (Petition for Writ of Habeas Corpus filed in California Supreme Court, Lodgment 9; California Supreme Court Order Denying Petition, Lodgment 10.) Subsequently, Petitioner filed this instant petition. Petitioner seeks an evidentiary hearing on the videotape and photographs allegedly taken by prison staff, and he seeks to set aside the disciplinary conviction and expunge all related documentation.

Discussion

1. Standard of Review of Magistrate Judge's Report and Recommendation

The district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). The Court reviews de novo the magistrate judge's conclusions of law. Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983) overruled on other grounds by United States v. Reyna-Tapia, 328 F.3d 1114, 1121-22 (9th Cir. 2003).

2. 42 U.S.C. § 1983 or Habeas Corpus

The Magistrate Judge did not reach the merits of the petition, as she concluded in the R&R that Petitioner could only bring his claims in a civil rights action pursuant to 42 U.S.C. § 1983. Accordingly, the Magistrate Judge recommended denying the petition without prejudice and allowing petitioner to amend his complaint and allege civil rights violations under § 1983. Neither party objected to the Magistrate Judge's recommendation.

In Preiser v. Rodriguez, the Supreme Court addressed whether prisoners seeking to restore good time credits lost during allegedly unconstitutional disciplinary proceedings could proceed under § 1983, or whether a habeas corpus petition under 28 U.S.C. § 2254 provided the exclusive remedy. 411 U.S. 475 (1973). Describing the two remedies, the Court held that a § 1983 action is available where a prisoner "is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." Id. at 499. "[W]hen a state prisoner is challenging the very

fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." Id. at 500. Accordingly, the Court held that, because restoration of the credits would affect the fact or duration of the prisoner's imprisonment, a habeas corpus proceeding was his sole federal remedy. Id.

Extending the reasoning from Preiser, the Supreme Court held in Heck v. Humphrey that, when a state prisoner brings a claim for monetary relief under § 1983 and if successful that claim would necessarily render a conviction or sentence invalid, an action for damages may not proceed until the conviction or sentence "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." 512 U.S. 477, 487 (1994). Similarly, in Edwards v. Balisok, the Supreme Court reasoned that a habeas corpus action provided the exclusive remedy for a prisoner claiming that procedures used in a disciplinary proceeding resulting in the loss of good time credits were unconstitutional where the petitioner's claim, if successful, would necessarily imply the invalidity of the loss of good time credits. 520 U.S. 641, 647-48 (1997).

Examining Supreme Court precedent, the Ninth Circuit held in Ramirez v. Galaza that the favorable termination rule first set forth in Heck only applies "to § 1983 suits that affect the fact or duration of a prisoner's confinement." 334 F.3d 850, 856 (9th Cir. 2003). Further, the court clarified "that the likelihood of the effect on the overall length of the prisoner's sentence from a successful § 1983 action determines the availability of habeas corpus." Id. at 858 (citing Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997).

In his petition, Petitioner seeks to set aside the disciplinary conviction and expunge all related documentation. Further, he seeks a hearing on the contents of the videotape and photographs allegedly taken by prison staff. Thus, because Petitioner seeks to set aside the conviction, his petition necessarily seeks to invalidate the loss of

good time credits. In Ramirez, the Ninth Circuit held that a habeas corpus petition was proper where a prisoner sought "expungement of a disciplinary finding from his record." 334 F.3d 850, 858 (9th Cir. 2003). Similarly, in Preiser, the Supreme Court held that a prisoner must use habeas corpus to challenge the loss of good time credits because that claim necessarily challenges the duration of a prisoner's confinement. 411 U.S. at 489.

Nevertheless, the Magistrate Judge relied on the following language from Ramirez to conclude that Petitioner must bring his claims in a § 1983 complaint: "a writ of habeas corpus is proper only where expungement is '*likely* to accelerate the prisoner's eligibility for parole.'" 334 F.3d at 858 (quoting Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989) (emphasis by Bostic court)). According to the Magistrate Judge, because Petitioner is serving a life sentence without possibility of parole, there is no possibility that the expungement of the disciplinary conviction and restoration of good time credits will accelerate or otherwise increase the likelihood that Petitioner will be released from custody. Therefore, she concluded that a writ of habeas corpus is not available to Petitioner.

This Court has found no case holding that habeas corpus jurisdiction is absent where a Petitioner seeks to invalidate a forfeiture of good time credits. Indeed, in the only Ninth Circuit case to mention the possibility that restoration of good time credits would not reduce a prisoner's sentence, the court instructed the district court on remand to consider whether restoration of the credits could result in a speedier release, and if not, "habeas would no longer be his *exclusive* federal remedy." Young v. Kenny, 907 F.2d 874, 878 n.3 (9th Cir. 1990) (emphasis added). Thus, the court in Young did not indicate that habeas would be inappropriate in such a situation, but that it would not provide the exclusive remedy. See also Docken v. Chase, 393 F.3d 1024, 1031 (2004) (habeas and § 1983 are not always mutually exclusive remedies)

Further, in Docken, the Ninth Circuit clarified Bostic's "likely to accelerate the prisoner's eligibility for parole" language upon which the Magistrate Judge relied in

finding habeas jurisdiction lacking here. 393 F.3d at 1031. According to the Docken court, Bostic used the term "'likely' to identify claims with a sufficient nexus to the length of imprisonment so as to implicate, but not fall squarely within, the 'core' challenges identified by the [Supreme Court in] Preiser." Id. Thus, the Docken court stated that, given "the *potential relationship* between [the petitioner's] claim and the duration of his confinement," "we are reluctant to unnecessarily constrain our jurisdiction to entertain habeas petitions absent clear indicia of congressional intent to do so." Id. (emphasis added) Accordingly, the court held that "when prison inmates seek only equitable relief in challenging aspects of their parole review that, so long as they prevail, *could* potentially affect the duration of their confinement, such relief is available under the federal habeas statute." Id. (emphasis in original).

In this case, Petitioner is serving a life sentence without possibility of parole and an additional sentence of one year to run consecutively. Thus, Petitioner is still eligible to earn good time credits toward the one year sentence. Further, if Petitioner's life sentence is ever invalidated or reduced, his good time credits will directly affect his term of imprisonment. As was the case in Docken, Petitioner's claim "could potentially affect the duration of [his] confinement." Accordingly, because the loss of good time credits directly affects Petitioner's underlying sentence, he may bring his claims in a petition for habeas corpus.

3. Scope of Review for 28 U.S.C. § 2254 Petitions

Title 28, United States Code, § 2254(a) sets forth the following scope of review for federal habeas corpus claims:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(a) (West Supp. 2003).

This action is governed by the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214. Under 28 U.S.C. § 2254(d),

as amended by the AEDPA:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim–
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> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

A state court's decision may be found "contrary to" clearly established Supreme Court precedent: "(1) if the state court applies a rule that contradicts the governing law set forth in [the Court's] cases or (2) if the state court confronts a set of facts that are materially indistinguishable from a decision of [the] Court and nevertheless arrives at a result different from [the Court's] precedent." Williams v. Taylor, 529 U.S. 362, 405-06 (2000). A state court decision may involve an "unreasonable application" of clearly established federal law, "if the state court identifies the correct governing legal rule from [the Supreme] Court's cases but unreasonably applies it to the facts of the particular state prisoner's case." Id. at 407. Alternatively, an unreasonable application may be found, "if the state court either unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." Id.

"[A] federal habeas court may not issue the writ simply because the court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly . . . . Rather, that application must be objectively unreasonable." Lockyer v. Andrade, 538 U.S. 63, 75-76 (2003) (internal quotation marks and citations omitted). "[S]o long as neither the reasoning nor the result of the state-court decision contradicts [Supreme Court precedent,]" the state-court decision will not be "contrary to" clearly established federal law. Id.

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Habeas relief is also available if the state court's adjudication of a claim "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in state court." 28 U.S.C. § 2254(d)(2). In order to satisfy this provision, Petitioner must demonstrate that the factual finding upon which the state court's adjudication of his claim rests, assuming it rests on a factual determination, is objectively unreasonable. Miller-El, 537 U.S. at 340 (2003).

Finally, where there is no reasoned decision from the state's highest court, the district court "looks through" to the underlying appellate court decision. Ylst v. Nunnemaker, 501 U.S. 797, 801-06 (1991). If the dispositive state court order does not "furnish a basis for its reasoning," federal habeas courts must conduct an independent review of the record to determine whether the state court's decision is contrary to, or an unreasonable application of, clearly established Supreme Court law. See Delgado v. Lewis, 223 F.3d 976, 982 (9th Cir. 2000) (overruled on other grounds by Lockyear, 538 U.S. at 75-76); Himes v. Thompson, 336 F.3d 848, 853 (9th Cir. 2003).

4. Prisoner's Right to Due Process

Like all citizens, prisoners are entitled to protections under the Due Process Clause. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). However, "the fact that prisoners retain rights under the Due Process Clause in no way implies that these rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed." Id. The Supreme Court held in Wolff that where a prison disciplinary hearing may result in the loss of good time credits, the prisoner must receive (1) advance written notice of the charges against him; (2) an opportunity to call witnesses and present evidence in his defense; and (3) a written statement by the factfinder indicating the evidence relied upon and reasons for the disciplinary action. 418 U.S. at 563-67. An inmate's interest in assuring that the loss of good time credits is not imposed arbitrarily must be "accommodated in the distinctive setting of a prison, where disciplinary proceedings 'take place in a closed, tightly controlled environment peopled by those who have chosen to violate the criminal law and who have been

lawfully incarcerated for doing so.'" Superintendent v. Hill, 472 U.S. 445, 454 (1985) (quoting Wolff, 418 U.S. at 561).

Procedural due process also requires that the findings of the prison disciplinary board are supported by "some evidence" in the record. Superintendent, 472 U.S. at 454. "Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board." Id. at 455-56.

5. Petitioner's Claims

Petitioner's only claims are that his due process rights were violated during the disciplinary hearing and that the record contained insufficient evidence to support a finding that he was guilty of participating in a riot.

Petitioner has failed to show that the state courts' adjudication of his claim was either contrary to established federal law or unreasonable in light of the facts of the case. See 28 U.S.C. § 2254(d). Pursuant to the Supreme Court's standard in Superintendent, the California Court of Appeal determined that there was some evidence to support the disciplinary finding. (Lodgment 8 at 3.) As noted by the appellate court, the correctional officer's positive identification of Petitioner as a member of the group of inmates attacking staff sufficiently supported the disciplinary finding. (Id.)

The record also indicates that the prison hearing afforded Petitioner with the due process procedures mandated by Wolff. As an initial matter, Petitioner was assisted by both a staff assistant and an investigative employee. (Petition, Ex. 6 (Rules Violation Reports) at 1.) Regarding notice, Petitioner confirmed at the violation hearing that he received written notice of the charge against him and written notice of the investigative employee report more than twenty-four hours prior to his hearing. (Id.) Petitioner was also provided the opportunity to present evidence and call witnesses at his hearing.

While he argues that he did not get the opportunity to present witnesses, the documents related to the hearing contradict his position. (Id. at 1-6.) The rules violation report indicates that, although he initially indicated a desire to call witnesses, he later declined, as evidenced by his signature next to the indication to not request live witnesses. (Id. at 4.) Further, according to the investigative employee's report, although Petitioner did not call live witnesses at the hearing, the investigative employee interviewed several witnesses at Petitioner's direction and asked the questions provided by Petitioner. (See, e.g., id. at 5-6.) Petitioner also complains that the hearing officer denied his request for photographs and a videotape of the riot. The documents describing the hearing do not indicate that Petitioner requested and was denied the evidence at the hearing, and Petitioner did not raise this ground in the administrative appeal. In any event, in response to a question posed by the investigative employee at Petitioner's direction, Corrections Officer Critendon responded that he did not take Petitioner's picture on the day of the incident. (Id. at 5.)

Finally, the hearing officer's report and subsequent administrative appeals decisions state the evidence relied upon and the reasoning for the decision. (Id.) The hearing officer, as well as the administrative appeals officials, based their decisions on evidence presented at the hearing, including the reporting officer's report stating that he observed Petitioner in the group of prisoners assaulting staff in the prison yard. (Id. at 2-3; Lodgment 3 (Second Level Appeal Response) at 3-7.) In this context, due process requires only that there be some evidence to support the findings made in the disciplinary hearing. Superintendent, 472 U.S. at 454. As demonstrated above, the evidence at the hearing was sufficient to support the findings. Accordingly, the Court concludes that the California Court of Appeal's decision was neither contrary to, nor an unreasonable application of, federal law. See 28 U.S.C. § 2254(d).

Conclusion

Based on reasons stated above, the Court finds that Petitioner may bring his claims in a petition for habeas corpus. After careful consideration, the Court **DENIES**

the petition for writ of habeas corpus with prejudice. The Clerk of Court shall close the case.

IT IS SO ORDERED.

DATED: November 2, 2006

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT

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