

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALLEN LYNN JEFFRIES,

Petitioner,

vs.

L.S. McEWEN, Warden,

Respondent.

CASE NO. 10cv2379-MMA (MDD)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 17]

**GRANTING RESPONDENT'S
MOTION DISMISS;**

[Doc. No. 14]

**DISMISSING FIRST AMENDED
PETITION FOR WRIT OF HABEAS
CORPUS WITHOUT PREJUDICE**

[Doc. No. 7]

Petitioner Allen Lynn Jeffries, a state prisoner proceeding *pro se* and *in forma pauperis*, filed a First Amended Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 [Doc. No. 7], challenging the outcome of a prison disciplinary proceeding which resulted in the loss of certain privileges. Respondent filed a motion to dismiss the petition [Doc. No. 14], to which Petitioner filed an opposition [Doc. No. 16]. The matter is currently before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Mitchell D. Dembin recommending that the First Amended Petition be dismissed without prejudice [Doc. No. 17].

1 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the
2 Court must “make a *de novo* determination of those portions of the report . . . to which objection is
3 made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations
4 made by the magistrate [judge].” 28 U.S.C. § 636(b) (1); *see also United States v. Remsing*, 874
5 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely objection, the Court “need only
6 satisfy itself that there is no clear error on the face of the record in order to accept the report and
7 recommendation.” Fed. R. Civ. P. 72 advisory committee’s note (citing *Campbell v. U.S. Dist.*
8 *Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,
9 1121 (9th Cir. 2003)(“[T]he district judge must review the magistrate judge’s findings and
10 recommendations *de novo* if objection is made, but not otherwise.”). No objections have been filed.

11 The Court concludes that the magistrate judge issued an accurate report and well-reasoned
12 recommendation that the First Amended Petition be dismissed. Accordingly, the Court **ADOPTS**
13 the Report and Recommendation in its entirety and **DISMISSES** Petitioner’s First Amended
14 Petition for writ of habeas corpus without prejudice to Petitioner’s right to pursue his claims
15 pursuant to Title 42 of the United States Code, section 1983.

16 **CERTIFICATE OF APPEALABILITY**

17 “The district court must issue or deny a certificate of appealability when it enters a final
18 order adverse to the applicant.” Rule 11 foll. 28 U.S.C. § 2254. A petitioner may not seek an appeal
19 of a claim arising out of a state court detention unless the petitioner first obtains a certificate of
20 appealability from a district judge or circuit judge under 28 U.S.C. § 2253. Fed. R. App. Proc.
21 22(b). Under 28 U.S.C. § 2253(c), a certificate of appealability will issue only if the petitioner
22 makes a substantial showing of the denial of a constitutional right. For the reasons set forth in detail
23 in the Report and Recommendation, Petitioner has not made a substantial showing of the denial of a
24 constitutional right. Accordingly, a certificate of appealability should not issue in this action.

25 **IT IS SO ORDERED.**

26 DATED: December 20, 2011

27 

Hon. Michael M. Anello
United States District Judge