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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JUSTIN LUCAS,  
  
Petitioner,  
  
v.  
  
G.J. JANDA,  
  
Respondent.

Case No.: 15cv1923 AJB (BLM)

- ORDER:**
- (1) OVERRULING PETITIONER’S OBJECTIONS;**
  - (2) ADOPTING REPORT AND RECOMMENDATION IN ITS ENTIRETY (Doc. No. 19);**
  - (3) DENYING PETITION FOR WRIT OF HABEAS CORPUS;**
  - (4) DENYING AS MOOT MOTION TO DISMISS (Doc. No. 8); AND**
  - (5) DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY**

On August 31, 2015, Petitioner Justin Lucas, a state prisoner proceeding pro se and in forma pauperis, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner challenges a decision of the prison’s disciplinary hearing officer



1 Petitioner was charged with a rules violation for distribution of a controlled substance.  
2 (*Id.* at 5.)

3 On February 27, 2013, a rules violation hearing was conducted. Petitioner’s  
4 cellmate testified that contraband found in their cell belonged to him and that Petitioner  
5 had no knowledge it was there. (*Id.* at 6–7.) Petitioner was found guilty of “introduction  
6 of a controlled substance for distribution” and was assessed a 180 day forfeiture credit,  
7 and other penalties. (*Id.* at 39.) Petitioner now challenges whether sufficient evidence  
8 underlies his forfeiture of credits, as Petitioner maintains he was unaware the controlled  
9 substances were located within his cell. (*See* Doc. No. 20.)

### 10 LEGAL STANDARD

11 The duties of the district court in connection with a Report and Recommendation  
12 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C.  
13 § 636(b). When a party objects to a Report and Recommendation, “[a] judge of the  
14 [district] court shall make a de novo determination of those portions of the [Report and  
15 Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). A district court  
16 may “accept, reject, or modify, in whole or in part, the findings or recommendations  
17 made by the magistrate judge.” Fed.R.Civ.P. 72(b); *see also* 28 U.S.C. § 636(b)(1).

18 In this case, review of the Petition is governed by the framework of the  
19 Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) because the Petition  
20 was filed in 2010, well after the Act’s effective date. *See Woodford v. Garceau*, 538 U.S.  
21 202, 210 (2003). As amended by AEDPA, 28 U.S.C. § 2254(d) states:

22 An application for a writ of habeas corpus on behalf of a person  
23 in custody pursuant to the judgment of a State court shall not be  
24 granted with respect to any claim that was adjudicated on the  
25 merits in State court proceedings unless the adjudication of the  
claim—

26 (1) resulted in a decision that was contrary to, or involved an  
27 unreasonable application of, clearly established Federal law, as  
28 determined by the Supreme Court of the United States; or

1 (2) resulted in a decision that was based on an unreasonable  
2 determination of the facts in light of the evidence presented in  
3 the State court proceeding.  
4 28 U.S.C. § 2254(d).

#### 5 DISCUSSION

6 A prisoner may challenge a prison disciplinary conviction by petition for writ of  
7 habeas corpus if the conviction resulted in the loss of good time credits because credits  
8 impact the duration of the prisoner's confinement. *Preiser v. Rodriguez*, 411 U.S. 475,  
9 487–88 (1973) (suit seeking restoration of good time credits was “within the core of  
10 habeas corpus in attacking the very duration of their physical confinement itself”).

11 The standard for judicial review of a finding by a prison-hearing officer is whether  
12 there is “some evidence” to support the hearing officer's conclusion. *Superintendent v.*  
13 *Hill*, 472 U.S. 445, 456–457 (1985). The federal Constitution does not require evidence  
14 that logically precludes any conclusion but the one reached by the disciplinary board. *Id.*  
15 457. This standard is met if there was some evidence from which the conclusion of the  
16 hearing officer could be deduced. *Id.* at 455. Ascertaining whether this standard is  
17 satisfied does not require examination of the entire record, independent assessment of the  
18 credibility of witnesses, or weighing of the evidence. Instead, the relevant question is  
19 whether there is any evidence in the record that could support the conclusion reached by  
20 the disciplinary board. *Id.* at 455–456. Even just one piece of evidence may be sufficient  
21 to meet the “some evidence” requirement, if that evidence has sufficient indicia of  
22 reliability.” *Bruce v. Yslet*, 351 F.3d 1283, 1288 (9th Cir. 2003); *Cato v. Rushen*, 824 F.2d  
23 703, 705 (9th Cir. 1987) (stating the “relevant question is whether there is *any* evidence  
24 in the record that *could* support the conclusion reached by the disciplinary board”)  
(emphasis in original).

25 Through his objections to the R&R, Petitioner asserts there are no facts or evidence  
26 to support the conclusion that the contraband found in Petitioner's cell was in plain view,  
27 or that he had actual possession of the contraband. (Doc. No. 20 at 4.) Petitioner also  
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1 distinguishes the authority cited in the R&R as factually different because in each  
2 instance, the contraband at issue was found in a common area of the cell. (*Id.* at 5.)

3       The arguments advanced by Petitioner do not warrant departure from the  
4 conclusion articulated in the R&R. The senior hearing officer that presided over  
5 Petitioner’s rules violation hearing relied on evidence sufficient to meet the standard  
6 articulated by *Hill*. The hearing officer cited the reporting officer’s observation that the  
7 contraband was found in an area within the reach of both inmates in a common area of  
8 the cell. Additionally, as noted in the rules violation report, an inmate is deemed to have  
9 constructive possession of anything found in his or her cell, and where an inmate has a  
10 roommate, both can be found guilty of possession for contraband found in their shared  
11 cell. (Doc. No. 1 at 38.) Although Petitioner maintains he was unaware of the contraband,  
12 the senior hearing officer considered both Petitioner’s claim of innocence and Johnson’s  
13 statement that Petitioner was unaware of the contraband. (*Id.* at 31, 35.) The Court’s role  
14 is limited to determining whether the “some evidence” standard is satisfied; the Court is  
15 not to reassess the credibility of witnesses or weigh the evidence offered in support of the  
16 guilty finding. *See Hurd v. Scribner*, No. 06CV0413, 2008 WL 544265, at \*2 (S.D. Cal.  
17 Feb. 27, 2008) (“Under the ‘some evidence’ standard, however, the Court cannot  
18 entertain the contention that the board did not properly weigh the evidence before it, or  
19 neglected to consider evidence favoring Petitioner.”).

20       Additionally, that Johnson took responsibility for the contraband does not absolve  
21 Petitioner of potential liability, as both may have had knowledge of its location. *See In re*  
22 *Zepeda*, 141 Cal. App. 4th 1493, 1500 (2006) (“Zepeda’s reliance on the evidence that  
23 supports his assertion not to have known about the razor blades, such as his cellmate’s  
24 acknowledgement of ownership and Zepeda’s own claim of innocence, does not change  
25 the analysis under *Hill*.”). Even in the cases Petitioner attempts to distinguish, courts have  
26 noted that alternate explanations for contraband does not mandate reversal of the findings  
27 of a disciplinary board. *See Dickerson v. Foulk*, No. 2:14CV0731, 2014 WL 6612094, at  
28 \*2 (E.D. Cal. Nov. 20, 2014) (“Under the ‘some evidence’ standard, that this is not the

1 only possible conclusion does not give Petitioner a basis for relief.”). The Court in  
2 *Dickerson* also acknowledged that access to the place where the contraband was located  
3 was “sufficient to uphold the hearing officer’s finding of culpability for possession.” *Id.*  
4 at \*3.

5 Based on the foregoing, Petitioner’s conviction is supported by “some evidence”  
6 and accordingly, his objections to the R&R are **OVERRULED**. The R&R is **ADOPTED**  
7 in its entirety. (Doc. No. 19.) The Petition for writ of habeas corpus is **DENIED**, (Doc.  
8 No. 1), and Respondent’s motion to dismiss is **DENIED AS MOOT**.

9 **CERTIFICATE OF APPEALABILITY**

10 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, a district  
11 court “must issue or deny a certificate of appealability when it enters a final order adverse  
12 to the applicant.” A state prisoner may not appeal the denial of a § 2254 habeas petition  
13 unless he obtains a certificate of appealability from a district or circuit judge. 28 U.S.C. §  
14 2253(c)(1)(A); *see also United States v. Asrar*, 116 F.3d 1268, 1269–70 (9th Cir. 1997)  
15 (holding that district courts retain authority to issue certificates of appealability under  
16 AEDPA). A certificate of appealability is authorized “if the applicant has made a  
17 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To  
18 meet this threshold showing, a petitioner must show that: (1) the issues are debatable  
19 among jurists of reason, (2) that a court could resolve the issues in a different manner, or  
20 (3) that the questions are adequate to deserve encouragement to proceed further.  
21 *Lambright v. Stewart*, 220 F.3d 1022, 1024–25 (9th Cir. 2000) (citing *Slack v. McDaniel*,  
22 529 U.S. 473 (2000); *Barefoot v. Estelle*, 463 U.S. 880 (1983)).

23 For the reasons detailed above, the Court concludes that reasonable jurists could  
24 not find it debatable whether the Court is correct in denying the Petition. Thus, the Court  
25 declines to issue a certificate of appealability.

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1 CONCLUSION

2 Finding the decision of the disciplinary board supported by the requisite “some  
3 evidence” standard articulated in *Superintendent v. Hill*, the Court **DENIES** the Petition  
4 for writ of habeas corpus. The Clerk of Court is instructed to close this case.  
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6 **IT IS SO ORDERED.**

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8 Dated: August 9, 2016

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10 Hon. Anthony J. Battaglia  
11 United States District Judge  
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