

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Clark v. Warden, FCI Mendota

No. 1:24-cv-00211-KES-SAB (HC) (E.D. Cal. Mar. 27, 2025) · No. 1:24-cv-00211-KES-SAB (HC) · Decided
March 27, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 RUSSEL BRUCE CLARK, No. 1:24-cv-00211-KES-SAB (HC) 12
Petitioner, ORDER ADOPTING FINDINGS AND 13 v. RECOMMENDATIONS AND
DENYING PETITION FOR WRIT OF HABEAS 14 WARDEN, FCI MENDOTA, CORPUS IN
PART 15 Respondent. (Doc. 17) 16 17 Petitioner Russel Bruce Clark is a federal prisoner
proceeding pro se and in forma 18 pauperis with a petition for writ of habeas corpus pursuant to
28 U.S.C. § 2241.

This matter was 19 referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 20 302. 21 Petitioner raises the following claims for relief: (1) prison officials
failed to provide 22 petitioner with the Discipline Hearing Officer (“DHO”) report within the time
frames set forth in 23 the Bureau of Prisons Program Statement 5270.09, Chapter 5, 541.8; (2) the
Western Regional 24 Office failed to enter petitioner’s BP–10 into SENTRY the day it was
received; (3) the Western 25 Regional Office violated due process under Program Statement
1330.18; and (4) the Central 26 Office violated due process when it rejected petitioner’s appeal
because he did not provide a copy 27 of the DHO report.

Doc. 1. 28 On November 21, 2024, the assigned magistrate judge issued findings and 1
recommendations that recommended denying Grounds Two through Four of the petition and 2
holding an evidentiary hearing on Ground One. Doc. 17. Both parties filed objections to the 3
findings and recommendations. Docs. 19, 21. 4 In accordance with the provisions of 28 U.S.C. §
636(b)(1), the court has conducted a de 5 novo review of the case.

Having carefully reviewed the entire file, including the parties’ 6 objections, the Court adopts the
findings and recommendations in full. The findings and 7 recommendations correctly concluded
that habeas relief should be denied on Grounds Two 8 through Four and that an evidentiary
hearing is appropriate on Ground One. 9 “Where a prison disciplinary hearing may result in the
loss of good time credits, Wolff 10 held that the inmate must receive: (1) advance written notice of
the disciplinary charges; (2) an 11 opportunity, when consistent with institutional safety and
correctional goals, to call witnesses and 12 present documentary evidence in his defense; and (3) a
written statement by the factfinder of the 13 evidence relied on and the reasons for the disciplinary

action.” Superintendent v. Hill, 472 U.S. 14 445, 454 (1985) (citing Wolff v. McDonnell, 418 U.S. 539, 556 (1974)).

In addition, “some 15 evidence” must support the decision of the hearing officer, id. at 455, and the evidence must have 16 some indicia of reliability, Cato v. Rushen, 824 F.2d 703, 705 (9th Cir. 1987). 17 In Ground One, petitioner asserts that his due process rights were violated because the 18 prison failed to provide him with the post-hearing DHO report which summarized the findings of 19 the disciplinary hearing.

Ground One therefore asserts that the prison did not provide him with “a 20 written statement by the factfinder of the evidence relied on and the reasons for the disciplinary 21 action.” Hill, 472 U.S. at 454. 22 Respondent, the warden of FCI Mendota, filed objections and argues that there is no 23 “constitutional right violation for failure to provide a written description of evidence under Wolff 24 after the DHO hearing,” and the findings and recommendations “rest[] on [a] mistaken reading of 25 Wolff as to pre-hearing written evidence and charge notice that the BOP must provide.” Doc.

19 26 at 4. Respondent is incorrect. The third requirement of Wolff, noted above, is that the inmate be 27 provided a “written statement by the factfinder of the evidence relied on and the reasons for the 28 disciplinary action.” Hill, 472 U.S. at 454.

The requirement of “a written statement is crucial” 1 for two reasons: “to provide a basis for review,” and “to ensure that the [prison hearing officer or 2 board] will act fairly.” Wolff, 418 U.S. at 565 (Douglas, J., concurring).

The Due Process Clause 3 imposes this post-hearing requirement because “the actions taken at such proceedings may 4 involve review by other bodies,” and “[w]ritten records of proceedings will... protect the inmate 5 against collateral consequences based on a misunderstanding of the nature of the original 6 proceeding.” Wolff, 418 U.S. at 565.

For example, the prison discipline proceedings “might 7 furnish the basis of a decision by [prison administrators] to transfer an inmate to another 8 institution.” Id. “Without written records, the inmate will be at a severe disadvantage in 9 propounding his own cause [] or defending himself from others.” Id. Respondent argues that 10 “the [assigned magistrate judge], without basis, falsely construed a constitutional due process 11 right of service of process of the final DHO Report after completion of the DHO hearing.” Doc.

12 19 at 3–4. To the contrary, the assigned magistrate judge correctly recognized that the provision 13 of the DHO Report after the hearing is one of Wolff’s requirements. 14 The findings and recommendations also correctly concluded that an evidentiary hearing is 15 necessary to resolve the factual dispute of whether petitioner was served with the DHO Report.

16 As the magistrate judge explained, “[w]hen the issue is one of credibility, resolution on the basis 17 of affidavits can rarely be conclusive....” Blackledge v. Allison, 431 U.S. 63, 82 n.25 (1977) 18 (quotation marks and citations omitted). “In deciding whether to grant an evidentiary hearing, a 19 federal court must consider whether such a hearing could enable an applicant to prove the 20 petition’s factual allegations, which, if true, would entitle the applicant to federal habeas relief.” 21 Schiro v. Landrigan, 550 U.S. 465, 474, (2007).

Respondent argues that petitioner was served, 22 and points to some evidence that tends to show that he was, such as a notation on the original 23 DHO Report saying it was served on petitioner. Doc. 19-1 at 7. Petitioner, however, disputes 24 that he received the Report, Doc. 1 at 14–16, 18, 27, and the BOP unit manager’s declaration 25 indicated the manager could not recall whether he provided the report to petitioner.

The 26 magistrate judge therefore reasonably concluded that an evidentiary hearing was warranted to 27 decide the issue. 28 Turning to Grounds Two through Four, the findings and recommendations correctly 1 | concluded that petitioner should be denied habeas relief on those grounds because a prisoner’s 2 | “right to due process [i]s violated only if he was not provided with process sufficient to meet the 3 | Wolff standard” and does not “require[] the prison to comply with its own, more generous 4 | procedures.” Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir.

1994), abrogated on other grounds 5 | by Sandin v. Conner, 515 U.S. 472 (1995). Furthermore, “inmates lack a separate constitutional 6 | entitlement to a specific prison grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th 7 | Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

As the procedures 8 | challenged in Grounds Two through Four were all challenges to BOP policies that do not fall 9 | within the scope of Wolff’s requirements, petitioner is not entitled to habeas relief on those 10 | claims. Petitioner’s objections fail to point to any error in the findings and recommendations and 11 || merely parrot the arguments from his petition.

See Doc. 21 at 1-4. 12 Accordingly: 13 1. The findings and recommendations issued on November 21, 2024, Doc. 17, are 14 ADOPTED in full; 15 2. Grounds Two through Four of petition for writ of habeas corpus are DENIED; and 16 3. This matter is REFERRED back to the magistrate judge in order to conduct an 17 evidentiary hearing on Ground One (failure to provide Petitioner a copy of the DHO 18 report).

19 20 91 | TIS SO ORDERED. _ 22 Dated: _ March 27, 2025 4h UNITED STATES DISTRICT JUDGE 24 25 26 27 28

