

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

Gutierrez v. Pantoja

Case No. 2:22-cv-1492-TLN-JDP (P) (E.D. Cal. Feb. 27, 2025) · No. 2:22-cv-1492-TLN-JDP (P) · Decided
February 28, 2025

OPINION

(PC) Gutierrez v. Reyersbach

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 UBALDO MIO GUTIERREZ, Case No. 2:22-cv-1492-TLN-JDP (P) 12 Plaintiff,

FINDINGS AND RECOMMENDATIONS

13 v. 14 J. PANTOJA, et al., 15 Defendants. 16 17 18 Plaintiff, a state prisoner proceeding pro se, alleges a violation of his due process rights at 19 a disciplinary hearing related to a contraband cell phone. Specifically, he alleges that defendant 20 correctional lieutenant J. Pantoja, who presided over the hearing, did not allow plaintiff to 21 question the correctional officer who found and reported the cell phone. Defendant moves for 22 summary judgment, arguing that plaintiff's claim is barred by the favorable termination rule, that 23 defendant did not violate plaintiff's due process rights, and that he is entitled to qualified 24 immunity. In response, plaintiff has filed a brief that is labeled as an opposition and cross motion 25 for summary judgment, but which is essentially a request to re-open discovery. I recommend that 26 plaintiff's request to re-open discovery be denied and that defendant's motion for summary 27 judgment be granted. 28 1 Background 2 The undisputed facts reflect that on December 12, 2019, correctional officer P. 3 Reyersbach discovered a contraband cell phone hidden in a package addressed to plaintiff. ECF

4 No. 46-3 at 2. According to the Rules Violation Report ("RVR"), the package appeared to be 5 legal papers sent to plaintiff from the Law Offices of Mifflin & Associates, but the bundle of 6 papers had been cut to create a cavity to conceal a cell phone. Id. As part of his investigation, 7 Reyersbach contacted the law office and confirmed that plaintiff was not a client. Id. Based on 8 this information, Reyersbach surmised that plaintiff and the unknown sender had attempted to 9 utilize the legal mail system at the prison as a cover to smuggle a contraband cell phone into the 10 prison. Id. 11 Plaintiff's disciplinary hearing for the contraband cell phone was held on December 27, 12 2019. Id. Plaintiff was served a copy of the RVR charging him with conspiracy to possess a cell 13 phone, and he received notice of the hearing six days prior to the hearing date. Id. at 2-3; ECF

14 No. 46-4 at 1. Defendant, the presiding officer of the hearing, found plaintiff guilty of the

charge.

15 ECF No. 46-2 at 2. As part of the hearing and decision, defendant considered: the RVR and 16 photographs taken by Reyersbach, plaintiff's statements during the hearing that plaintiff did not 17 have knowledge of the cell phone or sender, and plaintiff's prior history of possessing contraband 18 cell phones. ECF No. 46-4 at 5. Plaintiff was convicted and lost 90 days of good-time credit. Id. 19 In his second amended complaint, plaintiff alleges that defendant violated his due process 20 rights with respect to the disciplinary hearing by "not allowing" plaintiff to call and question 21 Reyersbach as a witness. Id. Specifically, he alleges that defendant did not want to call 22 Reyersbach for testimony and "did not want to put on the record" the questions that plaintiff had 23 for Reyersbach. Id. The disciplinary hearing results log reflects that plaintiff did not request any 24 witnesses. ECF No. 46-4 at 4. At his deposition, plaintiff testified that the only discussion he 25 could recollect having with defendant during the hearing concerned plaintiff's lack of knowledge 26 of the sender, mail, and cell phone. ECF No. 46-7 at 29-32. 27 28 1 Legal Standard 2 A. Summary Judgment 3 Summary judgment is appropriate where there is "no genuine dispute as to any material 4 fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Washington 5 Mutual Inc. v. United States, 636 F.3d 1207, 1216 (9th Cir. 2011). An issue of fact is genuine 6 only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party, 7 while a fact is material if it "might affect the outcome of the suit under the governing law." 8 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Wool v. Tandem Computs., Inc., 818 9 F.2d 1422, 1436 (9th Cir. 1987).

10 Rule 56 allows a court to grant summary adjudication, also known as partial summary 11 judgment, when there is no genuine issue of material fact as to a claim or a portion of that claim. 12 See Fed. R. Civ. P. 56(a); Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981) ("Rule 13 56 authorizes a summary adjudication that will often fall short of a final determination, even of a 14 single claim . . .") (internal quotation marks and citation omitted). The same standards apply to 15 both a motion for summary judgment and a motion for summary adjudication. See Fed. R. Civ. 16 P. 56(a), (c); Mora v. Chem-Tronics, 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998). 17 Each party's position must be supported by (1) citations to particular portions of materials 18 in the record, including but not limited to depositions, documents, declarations, or discovery; or 19 (2) argument showing either that the materials cited do not establish the presence or absence of a 20 genuine factual dispute or that the opposing party cannot produce admissible evidence to support 21 its position. See Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The court may consider 22 materials in the record not cited by the parties, but it is not required to do so. See Fed. R. Civ. P. 23 56(c)(3); Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001); see 24 also Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010). 25 "The moving party initially bears the burden of proving the absence of a genuine issue of 26 material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). To meet its burden, "the 27 moving party must either produce evidence negating an essential element of the nonmoving 28

party's claim or defense or show that the nonmoving party does not have enough evidence of an 1 essential element to carry its ultimate burden of persuasion at trial." Nissan Fire & Marine Ins. 2 Co., Ltd. v. Fritz Cos., Inc., 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving party meets this 3 initial burden, the burden then shifts to the non-moving party "to designate specific facts 4 demonstrating the existence of genuine issues for trial." In re Oracle Corp. Sec. Litig., 627 F.3d 5 376, 387 (citing Celotex Corp., 477 U.S. at 323). The non-moving party must "show more than 6 the mere existence of a scintilla of evidence." Id. (citing Anderson v. Liberty Lobby, Inc., 477 7 U.S. 242, 252 (1986)). However, the non-moving party is not required to establish a material 8 issue of fact conclusively in its favor; it is sufficient that "the claimed factual dispute be shown to 9 require a jury or judge to resolve the parties' differing versions of the truth at trial." T.W. Elec. 10 Serv., Inc. v. Pac. Elec. Contractors Assoc., 809 F.2d 626, 630 (9th Cir. 1987). 11 The court must apply standards consistent with Rule 56 to determine whether the moving 12 party has demonstrated there to be no genuine issue of material fact and that judgment is 13 appropriate as a matter of law. See Henry v. Gill Indus., Inc., 983 F.2d 943, 950 (9th Cir. 1993). 14 "[A] court ruling on a motion for summary judgment may not engage in credibility 15 determinations or the weighing of evidence." Manley v. Rowley, 847 F.3d 705, 711 (9th Cir. 16 2017) (citation omitted). The evidence must be viewed "in the light most favorable to the 17 nonmoving party" and "all justifiable inferences" must be drawn in favor of the nonmoving party. 18 Orr v. Bank of America, NT & SA, 285 F.3d 764, 772 (9th Cir. 2002); Addisu v. Fred Meyer, Inc., 19 198 F.3d 1130, 1134 (9th Cir. 2000). 20 B. Favorable Termination Rule 21 "A state prisoner cannot use a § 1983 action to challenge the 'fact or duration of his 22 confinement,' because such an action lies at the 'core of habeas corpus.'" Simpson v. Thomas, 23 528 F.3d 685, 693 (9th Cir. 2008) (quoting Preiser v. Rodriguez, 411 U.S. 475, 489 (1973)). 24 Thus, where a § 1983 action seeking damages alleges constitutional violations that would 25 necessarily imply the invalidity of a conviction or sentence, the prisoner must first establish that 26 the underlying sentence or conviction has already been invalidated on appeal, by a habeas 27 petition, or terminated in his favor via some other similar proceeding. Heck v. Humphrey, 512 28 U.S. 487-88 (1994). This "favorable termination" rule applies to prison disciplinary proceedings, 1 if those proceedings resulted in the loss of good-time or behavior credits. Edwards v. Balisok, 2 520 U.S. 641, 646-48 (1997) (holding that a claim for monetary and declaratory relief challenging 3 validity of procedures used to deprive prisoner of good-time credits is not cognizable under 4 § 1983). 5 Conversely, a § 1983 claim that will not necessarily invalidate the underlying disciplinary 6 action may proceed. See Muhammad v. Close, 540 U.S. 749, 754 (2004) (discussing "the 7 mistaken view expressed in Circuit precedent that Heck applies categorically to all suits 8 challenging prison disciplinary proceedings"); see also Hooper v. Cnty. of San Diego, 629 F.3d 9 1127, 1133 (9th Cir. 2011) (Fourth Amendment excessive force claim not Heck-barred because 10 "[a] holding in [the plaintiff's] § 1983 case that the use of the dog was excessive force would not 11 negate the lawfulness of the initial arrest attempt, or negate the unlawfulness of [the plaintiff's] 12 attempt to resist it") (internal quotation

omitted). 13 Analysis 14 Defendant moves for summary judgment on three grounds: (1) plaintiff's due process 15 claim is barred by Heck and Edwards; (2) plaintiff was afforded all process due under Wolff v. 16 McDonnell, 418 U.S. 539 (1974); and (3) defendant is entitled to qualified immunity. ECF No. 17 46-1. In response, plaintiff has filed a brief styled as an opposition and cross motion, arguing that 18 defendant engaged in delay tactics that prevented plaintiff from obtaining discovery, and that the 19 allegations in his second amended complaint demonstrate why this matter should proceed. ECF

20 No. 49 at 3-5. In other words, plaintiff takes the position that defendant's motion should be 21 denied on unfairness grounds and that discovery should be re-opened to permit plaintiff to pursue 22 his claim. Id. 23 As a preliminary matter, any request for an extension of a deadline set forth in the 24 scheduling order was to be filed before the relevant deadline. ECF No. 27 at 5. Typically, a 25 scheduling order can be modified only "upon a showing of good cause." *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (citation and quotations omitted); see Fed. R. 27 Civ. P. 16(b). "The pretrial schedule may be modified if it cannot reasonably be met despite the 28 diligence of the party seeking the extension." *Zivkovic*, 302 F.3d at 1087 (citation and quotations 1 omitted). "If the party seeking the modification was not diligent, the inquiry should end and the 2 motion to modify should not be granted." Id. (citation and quotations omitted). 3 Discovery closed in this case on July 26, 2024, and plaintiff did not move to re-open 4 discovery until January 10, 2025.¹ ECF No. 27 at 4; see ECF No. 49. Besides pointing to the 5 denial of plaintiff's motion to compel, plaintiff has not explained why he was unable to obtain 6 discovery within the time provided in the discovery and scheduling order, or why he did not seek 7 an extension prior to the discovery deadline. See ECF No. 49. Moreover, there is no indication 8 here that permitting further discovery would yield relevant information. In his opposition brief, 9 plaintiff argues that he seeks discovery concerning testimony that Reyersbach "would have 10 provided" at the disciplinary hearing had plaintiff been able to call him as a witness. ECF No. 49 11 at 4. However, plaintiff's due process claim concerns whether he was denied the right to call 12 witnesses at his disciplinary hearing, not what that testimony would have entailed. Accordingly, I 13 do not find re-opening discovery to be justified here. See Fed. R. Civ. P. 26(b) (discovery must 14 be "relevant to any party's claim or defense and proportional to the needs of the case"). 15 Based on plaintiff's desire for discovery that would be contrary to the information 16 recorded in the RVR, which forms the basis of the accusations against him, plaintiff seeks to 17 attack the conviction itself. However, a § 1983 claim is not the appropriate vehicle for such an 18 attack. See *Hebrard v. Nofziger*, 90 F.4th 1000, 1010 (9th Cir. 2024) ("So long as the claim 19 'indirectly [seeks] a judicial determination that necessarily implies the unlawfulness of the 20 [duration of the] State's custody,' Heck and Edwards require his § 1983 cause of action to be 21 dismissed—'only habeas corpus (or similar state) remedies' can be used to obtain such a ruling.") 22 (citation omitted). 23 Defendant argues that Edwards shows why plaintiff's claim cannot proceed. ECF No. 46- 24 1 at 9. I agree. In Edwards, the plaintiff alleged

that he was denied due process because the 25 hearing officer (1) did not allow him to call witnesses who possessed exculpatory evidence, and 26 (2) was biased and lied about the nonexistence of certain witness statements. See *Edwards*, 520 F.3d 1181 (9th Cir. 2017) (interpreting plaintiff's brief responding to defendant's motion for summary judgment as a motion to re-open and conduct further discovery. See ECF No. 47. 1 U.S. at 646-47. The court held that Heck barred the plaintiff's due process claim because "[t]he 2 principal procedural defect complained of by [the prisoner] would necessarily imply the invalidity 3 of the deprivation of his [earned]-time credits." *Id.* at 646. Similarly, here, plaintiff alleges that 4 he was denied due process at his disciplinary hearing because defendant refused to call the 5 accusing officer to testify. ECF No. 16-4 at 5. As in *Edwards*, plaintiff's due process claim, if 6 established, would necessarily imply the invalidity of the proceedings and forfeiture of time 7 credits against him. See *Nonnette v. Small*, 316 F.3d 872, 875 (9th Cir. 2002) ("There is no 8 question in this case that [plaintiff] seeks damages for the unconstitutional deprivation of the 9 good-time credits themselves, and that if he succeeded in showing that the prison officials acted 10 contrary to all of the evidence, a finding in his favor would imply the invalidity of the revocation . 11 . . ."); *Luster v. Amezcua*, No. 16-cv-0554-LJO-GSA, 2019 WL 1442992, at *8 (E.D. Cal. Apr. 1, 12 2019) (prisoner's claim barred by Heck because the plaintiff's theory depended on finding that 13 charges against her were false, which would necessarily imply invalidity of punishment imposed). 14 Because a determination favorable to plaintiff would imply that his conviction for the contraband 15 cell phone was invalid, plaintiff's claim is barred. See *Trimble v. City of Santa Rosa*, 49 F.3d 1658, 1659 (9th Cir. 1995) (proper course for claims barred by Heck is dismissal without prejudice 17 to refiling if the conviction is later invalidated). 18 Even if plaintiff could overcome the Heck and *Edwards* bar, there is no dispute that 19 plaintiff was afforded the requisite due process procedures for his disciplinary hearing. Due 20 process in prison disciplinary hearings requires only that the prisoner receive: (1) advanced 21 written notice of the alleged violation; (2) an opportunity to present evidence and call witnesses, 22 unless doing so would be hazardous to institutional security; and (3) legal assistance where the 23 charges are complex or the prisoner is illiterate. *Wolff*, 418 U.S. at 563-70. Where a decision 24 involves the revocation of a prisoner's good time credits, due process also demands that the 25 adverse decision be supported by "some evidence." *Superintendent v. Hill*, 472 U.S. 445, 455 26 (1985). 27 Here, defendant has presented undisputed evidence that plaintiff was served a copy of the 28 RVR charging him with conspiracy to possess a cell phone, and that he received notice of the 1 hearing six days prior to the hearing date. *Id.* at 2-3; ECF No. 46-4 at 1; ECF No. 49 at 37. The 2 disciplinary hearing results log reflects that plaintiff did not request any witnesses, and plaintiff 3 does not dispute this in his opposition. ECF No. 46-4 at 4; see ECF No. 49. And at his 4 deposition, plaintiff testified that the only discussion he could remember having with defendant 5 during the hearing concerned his lack of knowledge of the alleged conspiracy—not about calling 6 *Reyersbach* as a witness. ECF No. 46-7 at 29-32. Finally, defendant met the threshold of 7 providing "some evidence" in finding plaintiff guilty.

Hill, 472 U.S. at 455. Specifically, 8 defendant considered the RVR, the photographs taken by
Reyersbach, plaintiff's statements 9 during the hearing, and plaintiff's prior history of possessing
contraband cell phones. ECF No. 10 46-4 at 5. 11 To defeat the defendant's motion for summary
judgment, plaintiff must come forward 12 with admissible evidence to raise a triable issue of
material fact on the issue of whether he was 13 afforded all the protections to which he was
entitled. See Celotex, 477 U.S. at 322-23. Here, 14 plaintiff only points to the operative complaint,
which states that defendant did "not allow[] 15 plaintiff to bring officer P. Reyersbach to ask him
questions." ECF No. 15 at 5. However, the 16 Ninth Circuit has held that "uncorroborated and
self-serving testimony," without more, will not 17 create a "genuine issue" of material fact
precluding summary judgment. See Villiarimo v. Aloha 18 Island Air, Inc., 281 F.3d 1054, 1061
(9th Cir. 2002). A "conclusory, self-serving affidavit, 19 lacking detailed facts and any supporting
evidence, is insufficient to create a genuine issue of 20 material fact." Nilsson v. City of Mesa,
503 F.3d 947, 952 n.2 (9th Cir. 2010) (citation omitted). 21 Plaintiff's argument—that further
discovery would allow reconstruction of the testimony 22 Reyersbach hypothetically would have
given at the hearing had he been called—is insufficient to 23 defeat defendant's motion for
summary judgment. ECF No. 49 at 4; see Harrison v. Marshall, 24 No. CV 10-2300-GW (RNB),
2010 WL 5422540, at *11 (C.D. Cal. July 28, 2010) (rejecting due 25 process claim premised on
petitioner's unsupported speculation that correctional officer "would 26 have testified differently
than the account in his written report as set forth in the RVR" had he 27 been subject to
questioning by petitioner at disciplinary hearing). 28 Because there is no genuine dispute that
plaintiff received the procedural protections to 1 | which he was entitled under Wolff over the
course of the disciplinary proceedings and that "some 2 || evidence" supports defendant's finding
—and because plaintiff's claim is barred by Heck and 3 | Edwards, the court need not and will not
address defendant's remaining arguments. 4 Accordingly, it is hereby RECOMMENDED that: 5 1.
Plaintiff's opposition, ECF No. 49, construed as a request to re-open discovery , be 6 | DENIED. 7
2. Defendant's motion for summary judgment, ECF No. 46, be GRANTED. 8 3. Judgment be
entered in defendant's favor and against plaintiff. 9 4. The Clerk of Court be directed to close the
case. 10 These findings and recommendations are submitted to the United States District Judge 11
| assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within fourteen days of
12 | service of these findings and recommendations, any party may file written objections with the
13 | court and serve a copy on all parties. Any such document should be captioned "Objections to
14 | Magistrate Judge's Findings and Recommendations," and any response shall be served and
filed 15 | within fourteen days of service of the objections. The parties are advised that failure to
file 16 | objections within the specified time may waive the right to appeal the District Court's
order. See 17 | Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d
1153 (9th Cir. 18 | 1991). 19 | Ir Is SO ORDERED. 20 □ 21 | Dated: _ February 27, 2025 ssn (oto.

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JEREMY D. PETERSON

22 UNITED STATES MAGISTRATE JUDGE

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