

120.

IN THE  
SUPREME COURT OF THE U.S.

Roberto Antoine Oarden,  
Petitioner,

v.

Barbara Von Blanckensee,  
Respondent.

APPENDIX ORE

Roberto Oarden 781e36-083

USP-Tucson

PO BOX 24550

Tucson, AZ 85734

Table of Contents

Docket Report.

DHO Report (includes ofc. Tate's report).

Ninth Circuit Opinion.

District Court Opinion.

Magistrate Rand R.

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAY 13 2020

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERTO ANTOINE DARDEN,

No. 19-17297

Petitioner-Appellant,

D.C. No. 4:18-cv-00541-JGZ

v.

MEMORANDUM\*

BARBARA VON BLANCKENSEE,

Respondent-Appellee.

Appeal from the United States District Court  
for the District of Arizona  
Jennifer G. Zipps, District Judge, Presiding

Submitted May 6, 2020\*\*

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Federal prisoner Roberto Antoine Darden appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 petition for a writ of habeas corpus. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the denial of a § 2241 petition, *see Lane v. Swain*, 910 F.3d 1293, 1295 (9th Cir. 2018).

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*. Accordingly, Darden's request for oral argument is denied.

2018), *cert. denied*, 140 S. Ct. 60 (2019), and we affirm.

Darden challenges a prison disciplinary proceeding that resulted in disallowance of good conduct time. He contends that he was not provided with sufficient notice of the charges, and that he was denied the opportunity to present exculpatory documentary evidence. However, over a week before his disciplinary hearing, Darden was provided a copy of the incident report and a rights advisement that gave him clarity as to the charge and sufficient opportunity to prepare his defense. *See Wolff v. McDonnell*, 418 U.S. 539, 564 (1974). Further, he did not inform the disciplinary hearing officer (“DHO”) that he sought to present any evidence or that he was having difficulty obtaining the documents. On this record, Darden has not shown he was denied due process. *See id.* at 566-67.

Darden next contends that, because he shared his cell with another inmate, there was insufficient evidence that he controlled the locker in which the improvised weapon was found. However, the evidence considered by the DHO, including the report by the searching correctional officer and Darden’s statement at the disciplinary hearing that the weapon “didn’t look like that,” supported the DHO’s determination. *See Superintendent v. Hill*, 472 U.S. 445, 455 (1985) (due process is satisfied if “some evidence” supports disciplinary decision).

Darden’s motion for appointment of counsel is denied.

**AFFIRMED.**

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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Roberto Antoine Darden,

10 Petitioner,

11 v.

12 B. Von Blanckensee,

13 Respondent.

14 No. CV-18-00541-TUC-JGZ

**ORDER**

15 Before the Court is Magistrate Judge Jacqueline Rateau's Report and  
16 Recommendation (R&R) recommending that the District Court deny Petitioner's 28  
17 U.S.C. § 2241 Petition for Writ of Habeas Corpus. Petitioner has filed an objection and,  
18 relatedly, a 28 U.S.C. § 2247 Motion asking the Court to accept as true that Petitioner  
19 owns a master lock purchased in 2013. After reviewing the record, the Court will  
20 overrule Petitioner's objections and adopt Judge Rateau's R&R. The Court will also  
21 deny Petitioner's Motion filed pursuant to 28 U.S.C. § 2247.

22 **STANDARD OF REVIEW**

23 When reviewing a Magistrate Judge's Report and Recommendation, this Court  
24 "may accept, reject, or modify, in whole or in part, the findings or recommendations  
25 made by the magistrate judge." 28 U.S.C. § 636(b)(1). "[T]he district judge must review  
26 the magistrate judge's findings and recommendations *de novo* if objection is made, but  
27 not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
28 banc) (emphasis omitted). District courts are not required to conduct "any review at all . . .

1 . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149  
 2 (1985). *See also* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

3 **DISCUSSION**

4 As stated in the R&R,<sup>1</sup> Petitioner is currently serving a 600-month sentence for  
 5 Conspiracy to Produce Child Pornography and Tampering with a Witness, Victim, or  
 6 Informant. On December 29, 2017, a Bureau of Prisons officer found a homemade  
 7 weapon—a “lock-n-sock”—in the back compartment of Petitioner’s secured locker.  
 8 Petitioner was notified of his charge for possessing an instrument that might be used as a  
 9 weapon that same day. The case was referred to a Discipline Hearing Officer (DHO). In  
 10 advance of Petitioner’s hearing before the DHO, he was advised of the rights he would  
 11 have at the hearing, and he indicated that he understood those rights. Although he was  
 12 advised that the DHO might call witnesses who were reasonably available and had  
 13 information relevant to the charges, Petitioner waived his right to call witness and his  
 14 right to have staff representation.

15 At the disciplinary hearing on January 10, 2018, the DHO considered the report  
 16 prepared by the officer, as well as a photograph taken of the weapon, a memorandum  
 17 prepared by a senior correctional officer describing the search, and a memorandum  
 18 detailing chain of custody. The record reflects that Petitioner made no statements  
 19 denying that the weapon was his or indicating that someone else might have placed it in  
 20 his locker. At the conclusion of the hearing, the DHO found that Petitioner had  
 21 committed the charged act, and Petitioner was sanctioned with the loss of 41 days of  
 22 good time credit. Petitioner was advised of the findings, specific evidence relied on, and  
 23 reason for the disciplinary action, as well as of his appeal rights. Petitioner then  
 24 exhausted his administrative remedies and brought this action before the Court.

25 The R&R concluded that the hearing before the DHO and outcome did not violate  
 26 Petitioner’s due process rights. A prisoner has the right to five procedural safeguards in a  
 27 proceeding that might result in the loss of good time credits: 1) the right to receive

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28 <sup>1</sup> All facts contained in this summary appear in the R&R, as well as in Doc. 12-2.

written notice of the charges at least 24 hours before the disciplinary hearing; 2) the right to call witnesses, unless it would be unduly hazardous; 3) the right to assistance in preparing and presenting a defense to the charges; 4) the right to a copy of the disciplinary findings; and 5) the right to a hearing before a sufficiently impartial decision maker. *Wolff v. McDonnell*, 418 U.S. 539, 556-57 (1974). Due process requirements are satisfied where the DHO relies on “some evidence in the record” to decide to revoke good time credits. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454 (1985). “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; *see also Lane v. Salazar*, 911 F.3d 942, 951 (9th Cir. 2018).

Petitioner first objects to Magistrate Judge Rateau’s finding that he received adequate notice, required under *Wolff*, of the charges against him, because the report did not “divulge any fact that revealed how he [the officer] determined that the Petitioner and not his cell mate constructively possessed the purported locker.” (Doc. 22, pg. 2.) The record reflects that Petitioner received a copy of the incident report, just hours after the weapon was discovered. Petitioner knew, at the very least, that the officer had recovered the weapon from Petitioner’s locker, and despite having the opportunity to present witnesses and contest the evidence presented to the DHO, Petitioner provided no explanation as to why the weapon might belong to anyone else. And Petitioner now points to no evidence presented to the DHO that he was unprepared to defend against by virtue of having received only the officer’s report and no more.

Petitioner next objects to the Magistrate Judge’s finding that the DHO’s decision to revoke his good time credits was supported by “some evidence.” Petitioner’s main arguments supporting this objection are that the decision made in his case was supported by less evidence than was presented in *Superintendent*, and that the officer who searched his locker never explained why he expected to find a weapon inside. The “some

1 evidence" standard, however, is flexible, and the report provided by the officer of a  
2 weapon found inside of Petitioner's locker, as well as the memoranda describing the  
3 search and detailing the chain of custody, satisfied that standard. Petitioner does not  
4 describe what additional evidence might reasonably have been presented in a case such as  
5 this, short of video surveillance monitoring all activity around the locker or a fingerprint  
6 test run on the weapon—either of which might have provided stronger evidence in either  
7 direction but neither of which was required in light of what was presented. As for  
8 Petitioner's second argument, the officer was not obligated to provide a reason for having  
9 searched Petitioner's locker. Petitioner does not assert that he had a cognizable privacy  
10 interest in the space.

11 Petitioner further argues that his due process rights were violated when he was  
12 denied access to his central file, which might have contained exculpatory information.  
13 Petitioner makes this argument for the first time in his 28 U.S.C. § 2241 motion, without  
14 actually submitting any of the documents he alleges were contained within the file. The  
15 record does not reflect that he made any argument at his DHO hearing to the effect that  
16 the locker did not belong to him, or that his cell mate had open access to the locker even  
17 if it was in Petitioner's name. The record also does not reflect that Petitioner asserted at  
18 any point that he had been denied critical documents that might have been used in his  
19 defense—nor does Petitioner argue even now that he made such an assertion, reflected in  
20 the record or otherwise.

21 Finally, Petitioner argues, by way of a 28 U.S.C. § 2247 motion, that the Court  
22 should accept a 2013 receipt of purchase for a master lock, and a 2015 inventory  
23 reflecting a master lock, as "irrefutable evidence of the fact that petitioner still owns the  
24 master lock that he purchased in 2013," which he argued at the DHO hearing did not look  
25 like the lock presented to the DHO. (Doc. 24.) 28 U.S.C. § 2247 states that "[o]n  
26 application for a writ of habeas corpus documentary evidence, transcripts of proceedings  
27 upon arraignment, plea and sentence and a transcript of the oral testimony introduced on  
28 any previous similar application by or in behalf of the same petitioner, shall be

1 admissible in evidence.” Even accepting Petitioner’s submission, the receipt and  
2 inventory from years preceding the incident do not negate the finding that a “lock-n-  
3 sock” weapon was recovered in his locker. As argued by Respondent, “[t]he Bureau was  
4 not required to establish that Petitioner purchased the items to make the ‘lock-n-sock,’  
5 merely that he possessed it.” (Doc. 25, pg. 2.)

6 Before Petitioner can appeal this Court’s judgment, a certificate of appealability  
7 (COA) must issue. *See* 28 U.S.C. §2253(c); Fed. R. App. P. 22(b)(1); Rule 11(a) of the  
8 Rules Governing Section 2254 Cases. “The district court must issue or deny a  
9 certification of appealability when it enters a final order adverse to the applicant.” Rule  
10 11(a) of the Rules Governing Section 2254 Cases. Pursuant to 28 U.S.C. § 2253(c)(2), a  
11 COA may issue only when the petitioner “has made a substantial showing of the denial of  
12 a constitutional right.” The court must indicate which specific issues satisfy this  
13 showing. *See* 28 U.S.C. §2253(c)(3). With respect to claims rejected on the merits, a  
14 petitioner “must demonstrate that reasonable jurists would find the district court’s  
15 assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529  
16 U.S. 473, 484 (2000). For procedural rulings, a COA will issue only if reasonable jurists  
17 could debate whether the petition states a valid claim of the denial of a constitutional  
18 right and whether the court’s procedural ruling was correct. *Id.* Applying these  
19 standards, the Court concludes that a certificate should not issue, as the resolution of the  
20 petition is not debatable among reasonable jurists.

## 21 CONCLUSION

22 Accordingly,

23 IT IS ORDERED that the Report and Recommendation (Doc. 21) is ADOPTED.

24 IT IS FURTHER ORDERED that Petitioner’s Petition for a Writ of Habeas  
25 Corpus (Doc. 1) is DISMISSED.

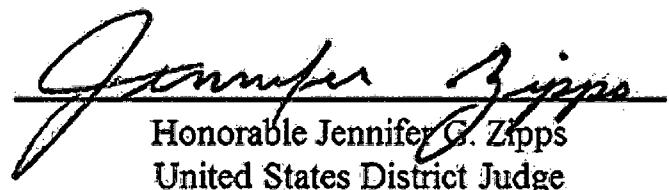
26 IT IS FURTHER ORDERED that Petitioner’s Motion under 28 U.S.C. § 2247  
27 (Doc. 24) is GRANTED.

28 IT IS FURTHER ORDERED that a Certificate of Appealability in this case is

1 DENIED.

2 The Clerk of the Court shall enter judgment accordingly and close the file in this  
3 action.

4 Dated this 30th day of October, 2019.

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8 Honorable Jennifer G. Zipts  
9 United States District Judge  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Roberto Antoine Darden,

10 Petitioner,

11 v.

12 B. Von Blanckensee,

13 Respondent.  
14

NO. CV-18-00541-TUC-JGZ

**JUDGMENT OF DISMISSAL IN A  
CIVIL CASE**

15 **Decision by Court.** This action came for consideration before the Court. The  
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed  
18 October 30, 2019, judgment of dismissal is entered. Petitioner to take nothing and this  
19 action is hereby dismissed.

20 Brian D. Karth  
21 District Court Executive/Clerk of Court

22 October 30, 2019

23 By s/ BRuiz  
24 Deputy Clerk

25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Robert Antoine Darden,

Petitioner,

VS.

B. von Blanckensee, Warden,

**Respondent.**

CV 18-0541-TUC-JGZ (JR)

## REPORT AND RECOMMENDATION

Pending before the Court is a Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus by a Person in Federal Custody filed by Robert Antoine Darden (“Petitioner”). (Doc. 1). On May 13, 2019, Respondent filed A Return and Answer to Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus. (Doc. 12). On May 31, 2019, Petitioner filed Motion Under Rule which the Court designated as a Reply. (Docs. 16, ). As explained below, the Magistrate Judge recommends that the Petition be dismissed.<sup>1</sup>

## I. Background

Petitioner is incarcerated in the United States Penitentiary in Tucson, Arizona ("USP Tucson"). (Doc. 12-2, p. 2-3.) He is serving a 600-month sentence for

<sup>1</sup> This case was randomly reassigned to Magistrate Judge Rateau on April 23, 2019. (Doc. 7).

1 Conspiracy to Produce Child Pornography and Tampering with a Witness, Victim or  
2 Informant. (*Id.*) His projected release date is February 18, 2055 via good conduct  
3 time release. (Doc. 12-2, p. 5-7.)

4 In this matter, Petitioner alleges that his rights were violated during a  
5 disciplinary hearing. He asks that the Court order the Federal Bureau of Prisons to  
6 expunge his incident report and credit back to him 41 days of good conduct time.  
7 Respondent argues that the Petition should be denied and dismissed because  
8 Petitioner failed to show that his constitutional rights were violated.<sup>2</sup>

9 Petitioner makes four arguments in his Petition: 1) that he was not put on  
10 notice as to how he had constructive possession of the weapon (Doc. 1-1, p. 2-4); 2)  
11 that the Discipline Hearing Officer (“DHO”) was not impartial because she relied on  
12 the officer’s account as stated in the incident report (*Id.* at 5-6); 3) that there was  
13 insufficient evidence that he committed the violation (*Id.* at 7-9); and 4) that based on  
14 new-reliable evidence, he is factually innocent of the charge. (*Id.* at 10-11).

15 **II. Facts**

16 At 8:43 a.m. on December 29, 2017, while searching Petitioner’s cell, an  
17 officer found a homemade weapon hidden in the back compartment of Petitioner’s  
18 secured locker. (Doc. 12-2, p. 14-15.) The weapon appeared to be a “lock-n-sock”  
19 consisting of a cut-up grey shirt fashioned and tied into a circular handle with a

20  
21 <sup>2</sup> Respondent does not contest Petitioner’s assertion that that he exhausted his  
22 administrative remedies. As such, the Court will proceed as if Petitioner’s  
allegations were properly exhausted.



1 combination lock attached by knots to hold it in place. (*Id.*) Within two hours of the  
2 discovery, an investigation was initiated. (*Id.*) At 10:44 a.m., Petitioner was advised  
3 of his rights and stated that he understood them. (*Id.*) He was provided written  
4 notice of the charge. (*Id.*) When asked if he had any comments, he responded, "no  
5 comment." (*Id.*) At 12:13 p.m., the investigation was complete and an Incident  
6 Report was prepared charging Petitioner with "possession, manufacture, or  
7 introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous  
8 chemical, explosive, ammunition, or any instrument used as a weapon." (*Id.*)  
9 Because of the type of sanctions that could be imposed, the case was referred to a  
10 DHO. (*Id.* at 14-15).

11 On January 2, 2018, Petitioner was advised of his rights before a DHO. (*Id.* at  
12 12-13.) He was also advised that an adverse finding by the DHO could result in a  
13 rescission or retardation by the Parole Commission of the presumptive of effective  
14 parole date. (*Id.*) Petitioner was advised that the DHO would be calling those  
15 witnesses who were reasonably available and determined by the DHO to have  
16 information relevant to the charges. (*Id.*) Petitioner waived his right to present  
17 witnesses as well as his right to have a staff representative appointed. (*Id.*) He was  
18 informed that his disciplinary hearing would occur on January 10, 2018. (*Id.*)

19 At the disciplinary hearing on January 10, 2018, in addition to the incident  
20 report and details of the investigation, the DHO considered the following  
21 documentary evidence: a photograph of the weapon; a memorandum prepared by a  
22 senior correctional officer describing the search and a memorandum prepared by the

1920-1921. - *Journal of the Royal Society of Medicine* 1921, 14, 100-101.

1 technician detailing chain of custody. (*Id.* at 9-11, 17-18.) The only statement made  
2 by the Petitioner at the hearing was in reference to the photograph of the weapon  
3 wherein he stated, "it didn't look like that." (*Id.*) Petitioner did not call any  
4 witnesses or ask to have a staff representative appointed to represent him at the  
5 hearing. (*Id.*) He was advised of the option to postpone the hearing to obtain  
6 representation; he declined. (*Id.*)

7 The DHO found that Petitioner committed the prohibited act of possession of  
8 a weapon and/or sharpened instrument and further found that the contrived  
9 instrument could cause bodily harm if used against someone. (*Id.*) In order to  
10 convey the seriousness and inappropriateness of his actions, Petitioner was  
11 sanctioned with the loss of 41 days of good conduct time. (*Id.*) In addition to being  
12 provided with a copy of the DHO's Report, Petitioner was advised of the findings,  
13 the specific evidence relied on and the action and reason for the disciplinary action.  
14 (*Id.*) He was advised that he had 20 calendar days from the date of the report to  
15 appeal the action. (*Id.*) Presumably, the time began to run when Petitioner received  
16 the Report on January 26, 2018. (*Id.*)

17 **III. Law**

18 **A. The Due Process Requirements in a Prison Disciplinary Hearing**

19 Federal prisoners serving a term of imprisonment of more than one year have  
20 a statutory right to receive credit toward their sentence for good conduct. See 18  
21 U.S.C. § 3624(b); 28 C.F.R. § 523.20 (2008). When such a statutorily created right  
22

1 exists, a prisoner has a constitutionally protected liberty interest in good time credit.  
2 *Wolff v. McDonnell*, 418 U.S. 539, 556–57 (1974).

3 Unlike the procedural safeguards available to a defendant in a criminal  
4 prosecution, the United States Supreme Court has established five procedural  
5 safeguards for inmates when the loss of good conduct time credits are involved: (1)  
6 an inmate must receive written notice of the infractions(s) at least 24 hours before the  
7 disciplinary hearing; (2) an inmate has a right to call witnesses unless it would be  
8 unduly hazardous to institutional safety or correctional goals; (3) an inmate is entitled  
9 to assistance in preparing and presenting a defense to the disciplinary charge; (4) an  
10 inmate is entitled to a copy of the disciplinary findings; and, (5) an inmate has a right  
11 to have a sufficiently impartial decision maker. *Wolff*, 418 U.S. 563-72.

12 A review of the record in this case reveals that the *Wolff* procedural safeguards  
13 were met. Petitioner received a copy of the Incident Report on December 29, 2017,  
14 just hours after the weapon was discovered. That was well in advance of the January  
15 10, 2019 disciplinary hearing. He received a copy of DHO Report within two weeks  
16 of his disciplinary hearing and was given 20 days from receipt to file an appeal. He  
17 was advised of his rights on two separate occasions-during the investigative matter  
18 on December 29, 2017 and again before the DHO hearing on January 2, 2018. His  
19 right to call witnesses and be represented was honored throughout the process. He  
20 just chose not to call witnesses and not to present evidence. And he chose not to  
21 receive assistance in preparing and presenting his defense. With respect to the fifth  
22 *Wolff* procedural safeguard-the right to have a sufficiently-impartial decision maker,

1 the relevant regulation is 28 C.F.R. 541.8(b) which provides that the DHO "not be a  
2 victim, witness, investigator, or otherwise significantly involved in the incident."  
3 The DHO in this case met that standard. There is no evidence to suggest otherwise.  
4 Petitioner received all the protections to which he was entitled before he was  
5 sanctioned with the loss of 41 days of good conduct time.

6 **B. The "Some Evidence" Standard of Review  
7 for Prison Disciplinary Hearings**

8 Judicial review of a prison disciplinary decision is limited to situations where  
9 the prison officials acted in an arbitrary and capricious manner. *Superintendent*  
10 *Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445, 455 (1985);  
11 *Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987). Requiring a modicum of evidence  
12 to support a decision to revoke good time credits will help to prevent arbitrary  
13 deprivations without threatening institutional interests or imposing undue  
14 administrative burdens. *See Hill*, 472 U.S. at 455. Due process requirements are  
15 satisfied if "some evidence" supports the decision of the prison disciplinary board.  
16 *Id.* A court is not required to examine the entire disciplinary record, perform an  
17 independent assessment of the credibility of witnesses or re-weigh the evidence. *Id.*

18 A court may overturn the decision only if no reasonable adjudicator could find  
19 the defendant guilty of the offense on the basis of the evidence presented. *Henderson*  
20 *v. United States Parole Commission*, 13 F.3d 1073, 1077 (7th Cir.1994). The  
21 standard is minimally stringent and only requires any evidence in the record that  
22 supports the conclusion reached by the disciplinary board. *Cato*, 824 F.2d at 705.

1       Here, the evidence supporting the DHO's finding consisted of the Incident  
2 Report, which detailed the search of Petitioner's secured locker by the officer who  
3 found the weapon, a photograph of the weapon, Petitioner's statement to the DHO  
4 that "it didn't look like that," and two memoranda, one describing the search and the  
5 second, detailing chain of custody. This evidence exceeds the "some evidence"  
6 standard required in prison disciplinary proceedings.

7       Petitioner did not present any witnesses or documentary evidence at the  
8 hearing but now argues that the DHO failed to determine that the weapon was in fact  
9 Petitioner's and not his cellmate's who apparently also had access to the secured  
10 locker where the weapon was found. No such evidence was presented to the DHO.  
11 Even if Petitioner had presented such evidence, he would still lose under the "some  
12 evidence" standard. *See Hamilton v. O'Leary*, 976 F.2d 341, 347 (7th Cir.) (applying  
13 a probability-based approach, the court held that a twenty-five percent probability  
14 that contraband found in a four-person cell belonged to one of the inmates constituted  
15 "some evidence.").

16       The DTO did not act in an arbitrary and capricious manner. Due process  
17 requirements were satisfied. Petitioner has failed to establish that his constitutional  
18 rights were violated.

19 **IV. Recommendation**

20       Based on the foregoing, the Magistrate Judge recommends that the District  
21 Court enter an order **DENYING** the Petition Under 28 U.S.C. § 2241 for a Writ of  
22 Habeas Corpus by a Person in Federal Custody (Doc. 1).

1       This Recommendation is not an order that is immediately appealable to the  
2 Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1),  
3 Federal Rules of Appellate Procedure, should not be filed until entry of the District  
4 Court's judgment.

5       However, the parties shall have fourteen (14) days from the date of service of  
6 a copy of this recommendation within which to file specific written objections with  
7 the District Court. See 28 U.S.C. § 636(b)(1) and Rules 72(b), 6(a) and 6(e) of the  
8 Federal Rules of Civil Procedure. Thereafter, the parties have fourteen (14) days  
9 within which to file a response to the objections. If any objections are filed, this  
10 action should be designated case number: CV 18-0541-TUC-JGZ. Failure to timely  
11 file objections to any factual or legal determination of the Magistrate Judge may be  
12 considered a waiver of a party's right to de novo consideration of the issues. *See*  
13 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc).

14       Dated this 3rd day of September, 2019.

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17       \_\_\_\_\_  
18       Honorable Jacqueline M. Rateau  
19       United States Magistrate Judge  
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22