

No.

IN THE
SUPREME COURT OF THE U.S.

Roberto Antoine Darden,
Petitioner,

v.

Barbara Von Blanckensee,
Respondent.

APPENDIX ONE

Roberto Darden 78236-083

USP-Tucson

PO BOX 24550

Tucson, AZ 85734

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Docket Report.

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

Ninth Circuit Opinion.

District Court Opinion.

Magistrate Rand R.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 13 2020

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

ROBERTO ANTOINE DARDEN,

Petitioner-Appellant,

v.

BARBARA VON BLANCKENSEE,

Respondent-Appellee.

No. 19-17297

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

MEMORANDUM*

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.

* 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**
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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,¹ 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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¹ All facts contained in this summary appear in the R&R, as well as in Doc. 12-2.

1 written notice of the charges at least 24 hours before the disciplinary hearing; 2) the right
2 to call witnesses, unless it would be unduly hazardous; 3) the right to assistance in
3 preparing and presenting a defense to the charges; 4) the right to a copy of the
4 disciplinary findings; and 5) the right to a hearing before a sufficiently impartial decision
5 maker. *Wolff v. McDonnell*, 418 U.S. 539, 556-57 (1974). Due process requirements are
6 satisfied where the DHO relies on “some evidence in the record” to decide to revoke
7 good time credits. *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454
8 (1985). “Ascertaining whether this standard is satisfied does not require examination of
9 the entire record, independent assessment of the credibility of witnesses, or weighing of
10 the evidence. Instead, the relevant question is whether there is any evidence in the record
11 that could support the conclusion reached by the disciplinary board.” *Id.* at 455-56; *see*
12 *also Lane v. Salazar*, 911 F.3d 942, 951 (9th Cir. 2018).

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

24 Petitioner next objects to the Magistrate Judge’s finding that the DHO’s decision
25 to revoke his good time credits was supported by “some evidence.” Petitioner’s main
26 arguments supporting this objection are that the decision made in his case was supported
27 by less evidence than was presented in *Superintendent*, and that the officer who searched
28 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

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

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

CONCLUSION

Accordingly,

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

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

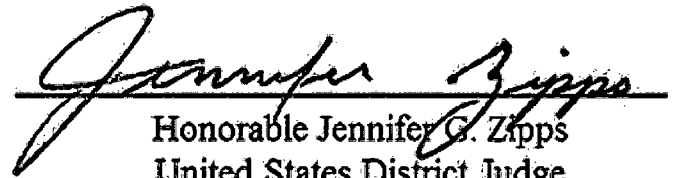
IT IS FURTHER ORDERED that Petitioner’s Motion under 28 U.S.C. § 2247 (Doc. 24) is GRANTED.

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. Zipps
9 United States District Judge
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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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 s/ BRuiz

24 By Deputy Clerk
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1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF ARIZONA**

3 Robert Antoine Darden,

4 Petitioner,

5 vs.

6 B. von Blanckensee, Warden,

7 Respondent.

CV 18-0541-TUC-JGZ (JR)

REPORT AND RECOMMENDATION

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9
10 Pending before the Court is a Petition Under 28 U.S.C. § 2241 for a Writ of
11 Habeas Corpus by a Person in Federal Custody filed by Robert Antoine Darden
12 ("Petitioner"). (Doc. 1). On May 13, 2019, Respondent filed A Return and Answer
13 to Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus. (Doc. 12). On May
14 31, 2019, Petitioner filed Motion Under Rule which the Court designated as a Reply.
15 (Docs. 16,). As explained below, the Magistrate Judge recommends that the Petition
16 be dismissed.¹

17 **I. Background**

18 Petitioner is incarcerated in the United States Penitentiary in Tucson, Arizona
19 ("USP Tucson"). (Doc. 12-2, p. 2-3.) He is serving a 600-month sentence for
20

21 ¹ This case was randomly reassigned to Magistrate Judge Rateau on April 23, 2019.
22 (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.²

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 ² 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 The first of these is the fact that the
2 number of people who are employed in the
3 service industries has increased steadily
4 since the war. This is due to a number of
5 factors, including the fact that the
6 service industries have been able to
7 attract a large number of people who
8 are not interested in the physical
9 work of the other industries. This is
10 due to the fact that the service
11 industries have been able to provide
12 a more pleasant and interesting
13 environment for their employees. This
14 has led to a steady increase in the
15 number of people who are employed in
16 the service industries, and this is
17 one of the main reasons why the
18 service industries have become so
19 important in the economy.

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21 fact that the service industries have
22 been able to provide a more pleasant
23 and interesting environment for their
24 employees. This is due to the fact
25 that the service industries have been
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40 fact that the service industries have
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42 and interesting environment for their
43 employees. This is due to the fact
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47 physical work of the other industries.
48 This is due to the fact that the
49 service industries have been able to
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51 environment for their employees. This
52 has led to a steady increase in the
53 number of people who are employed in
54 the service industries, and this is
55 one of the main reasons why the
56 service industries have become so
57 important in the economy.

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

1. The purpose of this document is to provide information regarding the security of the system. It is intended for use by personnel who are responsible for the security of the system. The information contained herein is classified as CONFIDENTIAL - SECURITY INFORMATION.

2.0. Introduction

3. The purpose of this document is to provide information regarding the security of the system. It is intended for use by personnel who are responsible for the security of the system. The information contained herein is classified as CONFIDENTIAL - SECURITY INFORMATION.

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3.0. Security Requirements

8. The purpose of this document is to provide information regarding the security of the system. It is intended for use by personnel who are responsible for the security of the system. The information contained herein is classified as CONFIDENTIAL - SECURITY INFORMATION.

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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.

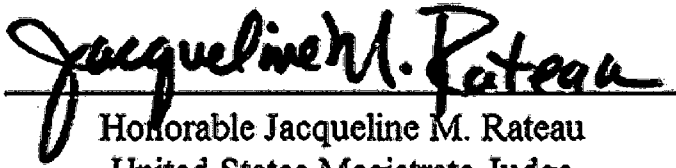
19 **IV. Recommendation**

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 Honorable Jacqueline M. Rateau
18 United States Magistrate Judge
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