UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RAYMOND W. LYNCH, Petitioner,	:	
v.	:	CA 03-162ML
WALTER WHITMAN, Respondent.	:	

REPORT AND RECOMMENDATION

David L. Martin, United States Magistrate Judge.

This is an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 ("the Petition") brought by an inmate at the Adult Correctional Institutions in Cranston, Rhode Island. Petitioner Raymond W. Lynch ("Petitioner" or "Lynch") alleges that his Fourteenth Amendment due process rights were violated at six prison disciplinary board hearings where he was found guilty of ten infractions. The resulting punishments included the loss of various amounts of good time. In the instant action, he seeks the restoration of that good time which totals 140 days.

Before the court is the motion of Petitioner for summary judgment. See Petitioner's Motion for Summary Judgment (Document #13) ("Motion for Summary Judgment" or "Motion"). The State of Rhode Island ("the State"), through the Department of Corrections ("DOC"), has objected to the Motion. See Respondent's Objection to Petitioner's Motion for Summary Judgment (Document #34) ("Objection"). This matter has been referred to me for preliminary review, findings, and recommended disposition pursuant to 28 U.S.C. § 636(b)(1)(B) and Local R. 32(a). I have determined that no additional hearing is necessary.[1]

Because I find that Petitioner does not have a liberty interest in his good time credit under R.I. Gen. Laws § 42-56-24

[1] A hearing on the Petition was conducted on August 14, 2003.

(1998 Reenactment), I recommend that Petitioner's Motion for Summary Judgment be denied and that the Petition be dismissed.

Facts and Travel

Between September 2000 and May 2002, Lynch appeared before six prison disciplinary boards as a result of seven disciplinary reports being filed against him. See Motion for Expansion of the Record (Document #9) ("Motion to Expand"), Attachments ("Att.") 1-6 (Discipline Reports). The disciplinary board which met on June 1, 2001, considered two disciplinary reports. See id., Att. 3.[2] The chart below shows the date of each offense, the date of the disciplinary board hearing, the infraction(s) considered at each hearing, and the punishment(s) imposed:

OFFENSE DATE	HEARING DATE	INFRACTION(S)	PUNISHMENT
9/19/00	9/22/00	Disobeying a lawful order, Loitering	10 days punitive segregation with 10 days loss of good time credits
5/24/01	6/1/01	Sexual harassment[3]	20 days punitive segregation with 20 days loss of good time credits
5/29/01	6/1/01	Tampering with a security device	20 days punitive segregation with 20 days loss of good time credits
10/11/01	10/16/01	Conduct constitut-ing a crime	15 days punitive segregation with 15 days loss of good time credits

[2] Attachment ("Att.") 3 to Petitioner's Motion for Expansion of the Record (Document #9) ("Motion to Expand") consists of two disciplinary reports. One is for sexual harassment which took place on May 24, 2001, and the other is for tampering with a security device which occurred on May 29, 2001. Both reports were considered at the June 1, 2001, disciplinary board.

[3] Petitioner claims that "sexual harassment" is not a valid charge, see Petitioner's Statement of Facts (Document #7) ("Statement of Facts"), Att. 3 (Affidavit-Statement of Facts re 6/1/01 hearing) ¶ 4, and that the correct charge "as listed in the Morris Rules and on the backside of the disciplinary reports," id. ¶ 5, is "[s]exual misconduct and/or activity," id.

11/23/01	11/27/01	Sexual harassment, Giving false information[4]	20 days punitive segregation with 20 days loss of good time credits
1/28/02	2/8/02	Conduct constitut-ing a crime, Disobeying a lawful order	25 days punitive segregation with 25 days loss of good time credits
5/7/02	5/24/02	Conduct constitut-ing a crime	30 days punitive segregation with 30 days loss of good time credits

See Motion to Expand, Att. 1-6.

Lynch alleges that his due process rights were violated at each of these hearings in the following manner:

OFFENSE DATE	HEARING DATE	CLAIMED DUE PROCESS VIOLATION
9/19/00	9/22/00	Insufficient notice as to the charges and lack of evidence
5/24/01	6/1/01	Invalid charge, lack of evidence, and not being allowed to complete oral statement
5/29/01	6/1/01	Not being allowed to complete oral statement and denial of opportunity to present defense and to call witnesses
10/11/01	10/16/01	Lack of evidence
11/23/01	11/27/01	Invalid charge, lack of evidence, and denial of opportunity to call witnesses
1/28/02	2/8/02	Invalid charge and lack of evidence
5/7/02	5/24/02	Invalid charge, denial of opportunity to call witness, and lack of evidence

Petitioner's Statement of Facts (Document #7) ("Statement of Facts"), Att. 1-6 (Affidavit-Statement of Facts for each hearing).

Lynch filed an application for post conviction relief in the state superior court to challenge the guilty findings by the six

[4] Although the 11/27/01 disciplinary hearing involved two charges, it appears that a single punishment of 20 days punitive segregation with 20 days loss of good time credits was imposed. See Motion to Expand (Document #9), Att. 5 (Inter-Office Memo from Warden Whitman to Petitioner of 12/3/01) at 2.

disciplinary boards. See Respondents' [sic] Supplemental Brief (Document #12) at 1. That application, C.A. KM 2002-0377, see Petition at 2, was denied by Superior Court Judge Netti Vogel on or about November 27, 2002, see id. at 3. Lynch did not appeal this denial to the Rhode Island Supreme Court. See Respondents' [sic] Supplemental Brief at 1.

On or about February 25, 2003, Lynch filed a Petition for Writ of Habeas Corpus in the Rhode Island Supreme Court (the "state Petition"). See Order for Further Briefing (Document #10) dated 8/18/03 at 1. The state Petition sought the restoration of "10 days good-time credits," state Petition ¶ 3, which Lynch had lost as a result of the disciplinary board hearing conducted on September 22, 2000, see id., Att. 1 (Disciplinary Report filed 9/19/00). There was no mention in the state Petition or in the three documents attached to it of the other five disciplinary hearings. The Rhode Island Supreme Court denied the state Petition in a one sentence Order on March 20, 2003. See Lynch v. Whitman, No. 03-97-M.P. (R.I. Mar. 20, 2003)(Order denying state Petition).

Lynch filed the instant Petition on or about April 28, 2003. On April 30, 2003, U.S. District Judge Mary M. Lisi ordered the state Attorney General to file a response to the Petition. See Order (Document #2) dated 4/30/03. Defendants/Respondents [sic] Answer/ Objection to Plaintiff's Application for Writ of Habeas Corpus (Document #3) ("Respondent's Objection") was filed on June 11, 2003. The Petition was referred to this Magistrate Judge on June 17, 2003, for findings and recommendations.

The court issued a Scheduling Order on June 23, 2003, giving Lynch until July 14, 2003, to file a reply, if he so desired, to Respondent's Objection. See Scheduling Order (Document #4) dated 6/23/03. On July 8, 2003, the court received Petitioner's Reply to Respondent's Answer/Objection to Petitioner's Application for Writ of Habeas Corpus (Document #5) ("Petitioner's Reply"). A

second Scheduling Order was issued by this Magistrate Judge on July 10, 2003, directing Lynch to submit by July 24, 2003, a concise statement of the essential facts he alleges in support of his claim that he was improperly deprived of good time credit. See Scheduling Order (Document #6) dated 7/10/03. This Scheduling Order also gave Respondent until August 7, 2003, to file a response to Lynch's factual statement. See id.

Lynch filed his Statement of Facts on July 22, 2003, and attached to it six affidavits executed by him, one for each of the disciplinary hearings which he challenges, detailing the violations which allegedly occurred. See Statement of Facts (Document #7). On August 14, 2003, Lynch filed the Motion to Expand. See Motion to Expand (Document #9). Attached to the Motion to Expand were copies of the seven disciplinary reports and the denials of Petitioner's appeals of the adverse actions resulting from those reports. The court conducted a hearing on the Petition on August 14, 2003, in which Lynch participated via telephone.

On August 18, 2003, following a review of the filings in this matter, this Magistrate Judge issued an Order for Further Briefing which directed the parties to submit memoranda addressing the issue of exhaustion of state remedies. See Order for Further Briefing (Document #10) dated 8/18/03. The Order for Further Briefing noted that Petitioner had not appealed the Superior Court's November 27, 2002, denial of his application for post conviction relief and that the state habeas corpus Petition which Lynch had filed in the Rhode Island Supreme Court on February 25, 2003, appeared to challenge only the ten day loss of good time imposed as a result of the disciplinary hearing held on September 22, 2000. See id. at 1-2. The court gave the parties until September 5, 2003, to file their responses. See id. at 4.

On August 28, 2003, Petitioner filed his Memorandum of Law addressing the exhaustion question raised by the court. See

Memorandum of Law (Document #11). The state's response regarding this issue was filed on September 5, 2003. See Respondents' [sic] Supplemental Brief (Document #12). Thereafter, the court took the matter under advisement and issued a Report and Recommendation on October 21, 2003, recommending that the matter be stayed for six months in order for Petitioner to exhaust his state remedies. See Report and Recommendation (Document #15) dated 10/21/03. On November 19, 2003, Judge Lisi issued a Memorandum and Order accepting the Report and Recommendation, staying the action for six months, and requesting that Petitioner notify the court of his progress by May 19, 2004. See Memorandum and Order (Document #17) dated 11/19/03.

On February 19, 2004, Petitioner filed a Supplement to Petitioner's Motion for Summary Judgment (Document #21). Respondent objected to said motion on February 24, 2004, see Defendants' [sic] Objection to Plaintiff's Supplement to Petitioner's Motion for Summary Judgment (Document #23), and on March 10, 2004, this court issued an Order allowing the supplemental filing by Petitioner, although the order indicated that Respondent need not respond to the Supplement and the court would not act on Petitioner's Motion for Summary Judgment until the stay terminated, see Order Allowing Supplemental Filing (Document #26) dated 3/10/04. On April 28, 2004, Lynch's petition for writ of habeas corpus was denied by the Supreme Court of Rhode Island in a brief order. See Order dated 4/28/04 in Lynch v. Whitman, No. 03-578-M.P. (R.I. Apr. 28, 2004)(Order denying second state petition). Petitioner filed a Notice of Progress - Final Judgement (Document #30) on May 6, 2004, stating that he had exhausted his state remedies due to the denial of his state petition for writ of habeas corpus. A status conference was held before this court on June 16, 2004, at which both Petitioner and Respondent agreed that Petitioner had exhausted his state remedies. Thus, the court directed Respondent to file

a response to Petitioner's Motion for Summary Judgment and file a transcript of the state court proceedings. Petitioner's Motion for Summary Judgment was referred back to this Magistrate Judge on June 17, 2004, for findings and recommendations. Respondent filed a statement of disputed facts pursuant to Local Rule 12.1(2) on June 25, 2004. See Respondents' [sic] Statement of Disputed Facts Pursuant to Local Rule 12.1(2) (Document #36). The court then took the matter under advisement.

Law

The law concerning a prisoner's Fourteenth Amendment liberty interest in good time credit is set forth in Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). While the United States Constitution does not guarantee good time credit, an inmate has a liberty interest in good time credit when a state statute provides such a right and delineates that it is not to be taken away except for serious misconduct. See id. at 557, 94 S.Ct. at 2975 ("It is true that the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison. But here the State itself has not only provided a statutory right to good time but also specifies that it is to be forfeited only for serious misbehavior."); id. ("[T]he State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance ...."); id. at 558, 94 S.Ct. at 2973 (holding that "[s]ince prisoners in Nebraska can only lose good-time credits if they are guilty of serious misconduct, the determination of whether such behavior has occurred becomes critical, and the minimum requirements of procedural due process appropriate for the circumstances must be observed").

The Court in Wolff differentiated between the revocation of good time credit versus the repeal of parole. See 418 U.S. at 561, 94 S.Ct. at 2976 ("[T]he deprivation of good time is not the

same immediate disaster that the revocation of parole is for the parolee. The deprivation, very likely, does not then and there work any change in the conditions of his liberty. It can postpone the date of eligibility for parole and extend the maximum term to be served, but it is not certain to do so, for good time may be restored. Even if not restored, it cannot be said with certainty that the actual date of parole will be affected ....").

In Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), the Court explained that "federal courts ought to afford appropriate deference and flexibility to state officials trying to manage a volatile environment," id. at 482, 115 S.Ct. at 2299 (discussing the involvement of federal courts in the "day-to-day management of prisons"). The Court announced that the "time has come to return to the due process principles we believe were correctly established and applied in Wolff ...." Id. at 483, 115 S.Ct. at 2300.

> Following Wolff, we recognize that States may under certain circumstances create liberty interests which are protected by the Due Process Clause. But these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force nonetheless imposes **atypical and significant hardship** on the inmate in relation to the ordinary incidents of prison life.

Id. at 483-84, 115 S.Ct. at 2300 (internal citations omitted)(bold added). Applying the above analysis, the Court determined that the disciplinary placement of an inmate in segregated confinement for 30 days did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest. See Sandin v. Conner, 515 U.S. at 486, 115 S.Ct. at 2301.

The United States Court of Appeals for the First Circuit has commented upon the holdings in Wolff and Sandlin. See McGuinness

v. Dubois, 75 F.3d 794 (1st Cir. 1996).[5] "In Wolff v. McDonnell the Court held that a state-created right to good-time credit for satisfactory behavior, forfeitable only for serious misbehavior, is a sufficient liberty interest within the Fourteenth Amendment ...." McGuinness v. Dubois, 75 F.3d at 797 (internal citation omitted). The McGuinness court discussed Sandin in a footnote. See id. at 798 n.3 ("Sandin, however, did not retreat from Wolff's holding that, if a state statutory provision created a liberty interest *in a shortened prison sentence* which results from good-time credits, revocable only if the inmate is guilty of serious misconduct, that inmate is entitled to the procedural protections outlined in Wolff.").

The First Circuit applied Sandin in Dominique v. Weld, 73 F.3d 1156 (1st Cir. 1996), stating that the new threshold test articulated in Sandin precluded a finding that the plaintiff had a liberty interest in remaining in work release status and thus barred any relief, see id. at 1160. The court held that "[u]nder the standard announced in Sandin, we hold that plaintiff's loss of work release privileges did not affect any state-created liberty interest of his, hence did not violate the Due Process Clause." Id. at 1161. That court accepted the defendants' well-reasoned argument that "[i]f solitary confinement for thirty days did not, in Sandin, rise to the level of an 'atypical, significant hardship,' then surely removal from work release does not do so ...." Id. at 1159. The Dominique court further explained that if the loss of work release privileges were found to be an atypical restraint "we would open the door to finding an

[5] In McGuinness v. Dubois, 75 F.3d 794 (1st Cir. 1996), an inmate, who had been found guilty of various prison disciplinary code violations, brought a § 1983 action against the prison disciplinary hearing officer and prison superintendent, see id. at 795-96. The Court of Appeals held, among other rulings, that the denial of the inmate's request for live testimony from other prisoner witnesses at the disciplinary hearing did not violate his right to due process "on the facts of this case." Id. at 800.

'atypical ... restraint' whenever an inmate is moved from one situation to a significantly harsher one that is, nonetheless, a commonplace aspect of prison existence." Dominique v. Weld, 73 F.3d 1156 at 1160 (alteration in original).

Discussion

As an initial matter, to the extent that Petitioner's claims are based on alleged violations of the Morris Rules, those claims must be rejected. See Doctor v. Wall, 143 F.Supp.2d 203, 204 (D.R.I. 2001)(holding that the Morris Rules "are *state* rules and regulations that govern the conduct of classification and disciplinary proceedings at the ACI, and are to be enforced, if at all, by state machinery."); see also Cugini v. Ventetuolo, 781 F.Supp. 107, 113 (D.R.I. 1992)("[S]tate prisoner actions alleging violations of the Morris rules or seeking enforcement of those rules properly belong in state court because the rules were promulgated under state law and were meant to be dealt with by state machinery"). "[D]iscipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene." Johnson v. Avery, 393 U.S. 483, 486, 89 S.Ct. 747, 749, 21 L.Ed.2d 718 (1969). Thus, if Petitioner is to be granted any relief by this court, it must be based on a finding that his federal constitutional or statutory rights have been violated and not on the basis of a claimed violation of the Morris Rules. See Doctor v. Wall, 143 F.Supp.2d at 205.

Petitioner contends that the Rhode Island courts have rejected (or refused to hear) the claims raised in the instant Petition because of their allegedly mistaken view "that inmates at the Adult Correctional Institutions have no vested liberty interest in R.I.G.L. [§] 42-56-24, which awards good-time credits." Memorandum of Law in Support of Petitioner's Reply to Respondent's Answer to Petitioner's Application for Writ of

Habeas Corpus[6] ("Petitioner's Reply Mem.") at 1. He asserts that the Rhode Island "courts claim that the credits are awarded through the discretion of prison officials, and that this is the sole reason that the A.C.I. inmates have no vested liberty interest in the statute,"[7] id., and that "[t]he courts rely on Sandin v. Conner, [515 U.S. 472,] 115 S.Ct. 2293[, 132 L.Ed.2d 418] (1995),"[8] id. Petitioner relies primarily upon the holding

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[6] The Memorandum of Law in Support of Petitioner's Reply to Respondent's Answer to Petitioner's Application for Writ of Habeas Corpus ("Petitioner's Reply Mem.") was filed on July 8, 2003, in support of Petitioner Relpy to Respondent's Answer/Objection to Petitioner's Application for Writ of Habeas Corpus (Document #5).

[7] Although not specifically cited by Petitioner, presumably he has in mind the decisions of the Rhode Island Supreme Court in Barber v. Vose, 682 A.2d 908 (R.I. 1996), and Leach v. Vose, 689 A.2d 393 (R.I. 1997). Barber held that Rhode Island's good-time sentence credit statute, R.I.G.L. § 45-56-24, "is *discretionary* in its application," Barber, 682 A.2d at 912, and that the due process procedures required by Wolff "are only required when the statute in question is mandatory or specifically limits the discretion of prison department authorities," id. In Leach, the court reiterated that because

> there is no liberty interest created by our good time and industrial time credit statute since it is completely discretionary, the department's modification of its manner of calculating good time and industrial time credits does not implicate the due-process clause. The Department can decide, within its discretion, whether to award good time and industrial time credits at all, so an inmate cannot claim a violation of his or her liberty interests when the Department decides to change the actual method of calculation.

Leach, 689 A.2d at 398.

[8] The Rhode Island Supreme Court opined In L'Heureux v. State Department of Corrections, 708 A.2d 549 (R.I. 1998), that "[t]he Sandin rationale would indicate that there is no constitutional right to judicial review of ... a disciplinary proceeding," id. at 552, which results in a prisoner being placed in disciplinary segregation for thirty days, see id. The "Sandin rationale," id., as articulated by the L'Heureux court, is "that the state's action in placing the inmate in disciplinary segregation for thirty days did not work a major disruption in his environment, id. (citing Sandin v. Conner, 515 U.S. 472, 485-86, 115 S.Ct. 2293, 2300-01, 132 L.Ed.2d 418 (1995)).

by the United States Supreme Court in Wolff v. McDonnell that where a state provides a statutory right to good time and also specifies that it is to be forfeited only for serious misbehavior, see Wolff, 418 U.S. at 557, 94 S.Ct. at 2975, a prisoner has a liberty interest in the retention of that good time, see id., and he is entitled to "the minimum requirements of procedural due process appropriate for the circumstances," id. at 558, 94 S.Ct. at 2976.

Petitioner further appears to argue that the Rhode Island state courts have misread Sandin and that they are mistaken in holding (or at least intimating) that a prisoner has no right to judicial review of alleged violations of procedural due process rights at prison disciplinary proceedings which result in the loss of good time credits unless that loss is more than thirty days. In support of this contention, he cites Anderson v. Recore, 317 F.3d 194 (2nd Cir. 2003), wherein the court held that "Sandin did not dispense with statutory or regulatory language creating an entitlement. It simply held that the regulation at issue in that case did not create a liberty interest because the plaintiff had not shown an atypical or significant deprivation,"[9] id. at 199. The Anderson court also rejected the proposition that Sandin created a test for identifying a liberty interest different from that set out in Wolff v. McDonnell. See id. at 200.

As additional support for his argument that the Rhode Island courts have misapprehended the meaning of Sandin, Petitioner cites the First Circuit opinion in McGuinness v. Dubois, 75 F.3d 794 (1st Cir. 1996):

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[9] The issue in Anderson v. Recore, 317 F.3d 194 (2nd Cir. 2003), was whether prison officials who had revoked an inmate's full time temporary release status and incarcerated him without a hearing were protected by qualified immunity from inmate's civil rights suit, see id. at 195-96.

> In Sandin, the Court concluded that solitary confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest. [515 U.S.] at [486], 115 S.Ct. at 2301. Nor did it inevitably affect the duration of Conner's sentence. Id. at [487], 115 S.Ct. at 2302.
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> **Sandin, however, did not retreat from Wolff's holding that, if a state statutory provision created a liberty interest *in a shortened prison sentence* which results from good-time credits, revocable only if the inmate is guilty of serious misconduct, that inmate is entitled to the procedural protections outlined in Wolff.** Id. at [477-78], 115 S.Ct. at 2297; see also Gotcher v. Wood, 66 F.3d 1097, 1101 (9th Cir.1995)(opining that Wolff's due process principles remain applicable in the context of revocation of statutory good-time credits after Sandin).

McGuinness v. Dubois, 75 F.3d 794, 798 n.3 (1st Cir. 1996)(bold added).

Petitioner argues that "[t]he due process clause protects if the inmate's sentence length is affected." Petitioner's Reply Mem. at 3. He also cites Dominique v. Weld, 73 F.3d 1156 (1st Cir. 1996). In Dominique, the First Circuit held that a prisoner's loss of work release privileges did not affect any state-created liberty interest. See 73 F.3d at 1161. However, the First Circuit specifically noted in Dominique that "the state's action here did not in any way affect the duration of [his] state sentence." Id. at 1160. Thus, Petitioner's argument is that if the disciplinary action imposed affects the length of a prisoner's sentence, a liberty interest is involved and the due process requirements prescribed by Wolff v. McDonnell must be observed by the state.

The court agrees with Petitioner that Sandin has not invalidated the requirements of Wolff. Wolff, as recognized by the Supreme Court in Sandin, remains good law. See Sandin, 515 U.S. at 483, 115 S.Ct. at 2300. However, the court disagrees that the Rhode Island good time statute is equivalent to the Nebraska statute considered in Wolff.

The Supreme Court attached significance to the fact that Nebraska had "provided a statutory **right to good time** [and] specifie[d] that it is to be forfeited only for serious misbehavior." Wolff v. McDonnell, 418 U.S. at 557, 94 S.Ct. at 2975 (bold added). The Nebraska statute, 83–1,107, Neb. Rev. Stat. (Cum. Supp.1972), required the chief executive of a Nebraska penal facility to reduce, for parole purposes, the term of an offender for good behavior and faithful performance of duties while confined according to a prescribed schedule, see Wolff v. McDonnell, 418 U.S. at 547 n.6, 94 S.Ct. at 2970 n.6. Such reductions could be forfeited or withheld by the chief executive only after the offender had been consulted regarding the charges of misconduct. See id. Furthermore, another statute, Neb. Rev. Stat. § 83–185 (Cum. Supp. 1972), specifically limited the forfeiture or withholding of such reductions to cases of flagrant or serious misconduct, see Wolff v. McDonnell, 418 U.S. at 546-47, 94 S.Ct. at 2969-70. Thus, the statutes limited the discretion of the chief executive of the facility in three important respects. First, reductions were mandated if the offender satisfied the statutory requirement of good behavior and faithful performance of duties. See id. at 547 n.6, 94 S.Ct. at 2970 n.6. Second, reductions could only be forfeited or taken away after the offender had been consulted regarding the misconduct. See id. Third, reductions could not be forfeited or withheld except for flagrant or serious misconduct. See id.

In contrast, the Rhode Island statute pertaining to good time credit does not give such a liberty interest. Rhode Island General Laws § 42-56-24 provides that good time credit shall be deducted from a prisoner's term(s) of sentence "with the consent of the director of the department of corrections ... upon recommendation to him or her by the assistant director of institutions/operations ...." R.I. Gen. Laws § 42-56-24(a) (1998

Reenactment). This statute also states in relevant part that the "assistant director ... subject to the authority of the director, shall have the power to restore lost good conduct time in whole or in part upon a showing by the prisoner of subsequent good behavior and disposition to reform ...." R.I. Gen. Laws § 42-56-24(d). Thus, it is discretionary and not mandatory that an inmate have his good time credit restored.

The Rhode Island Supreme Court examined the Rhode Island good time statute in Barber v. Vose, 682 A.2d 908 (R.I. 1996), and stated that such recommendation and consent constitute "prerequisites to the reduction of the term of a sentence through the extension of good time credits," 682 A.2d at 914 (quoting State v. Ouimette, 375 A.2d 209, 210 n.2 (R.I. 1977)). Thus, unlike the Nebraska statute, the Rhode Island statute does not confer upon a prisoner "a statutory right to good time," Wolff v. McDonnell, 418 U.S. at 557, 94 S.Ct. at 2975, but rather invests prison officials with discretionary authority to extend good time credits. Additionally, there is no requirement in the Rhode Island statute that the offender be consulted before the good time is deducted from that which the prisoner has accumulated. See R.I. Gen. Laws § 42-56-24. This is further evidence of the discretionary nature of the authority given to prison officials. Moreover, there is no limitation that good time may be forfeited only for serious or flagrant misconduct. See id. Indeed, the statute provides that "for every day a prisoner shall be shut up or otherwise disciplined for bad conduct ...," id., he loses one day of good time, see id. Thus, the statute contemplates the loss of good time even if a prisoner were confined to his cell for a period as short as twenty-four hours, a mild punishment which would clearly be insufficient for serious or flagrant misconduct. In contrast, the Nebraska statute in Wolff specified that a reduction required that the misconduct be flagrant or

serious. Although Plaintiff argues to the contrary, the due process protection given to inmates with regard to good time credit by these two statutes is very different.

This court is bound to accept the Rhode Island Supreme Court's determination on the issue of whether the R.I. Gen. Laws § 45-56-24 is discretionary in its application. See Salemme v. Ristaino, 587 F.2d 81, 87 (1st Cir. 1978)("It is well settled that the interpretation of a state statute is for the state court to decide and when the highest court has spoken, that interpretation is binding on federal courts."); see also United States v. Fernandez-Antonia, 278 F.3d 150, 162 (2nd Cir. 2002) ("It is axiomatic ... that when interpreting state statutes federal courts defer to state courts' interpretation of their own statutes."); Puleio v. Vose, 830 F.2d 1197, 1204 (1st Cir. 1987) ("interpretation of state statute by state's highest tribunal binds federal court")(citing Salemme); Cournoyer v. Mass. Bay Transp. Auth., 744 F.2d 208, 209 (1st Cir. 1984) ("[I]t hardly need be said that the Supreme Judicial Court of Massachusetts is the 'final judicial arbiter' of the meaning of [Mass. Gen. Laws] ch. 260, § 2B."). The Rhode Island Supreme Court has determined that the good-time sentence credit statute is discretionary in its application. See Leach v. Vose, 689 A.2d 393, 398 (R.I. 1997)("there is no liberty interest created by our good time and industrial time credit statute since it is completely discretionary"); Barber v. Vose, 682 A.2d 908, 914 (R.I. 1996) ("so-called good time credit for good behavior while incarcerated is not a constitutional guarantee but is instead an act of grace created by state legislation ...")(internal citation omitted).

Because R.I. Gen. Laws § 42-56-24 is discretionary in nature, an inmate does not have a liberty interest in good time credit which is protected under the Due Process Clause. Thus, Petitioner has no liberty interest in the 140 days of good time

credit for which he seeks restoration by means of the present Petition. See Hallmark v. Johnson, 118 F.3d 1073, 1079-80 (5th Cir. 1997)("Because the state statutes have ... vested complete discretion with the state correctional authorities on the issue of restoration of good time credits forfeited for disciplinary infractions, there is no protected liberty interest in the restoration of good time credits ...."). Therefore, his Motion for Summary Judgment should be denied and the Petition dismissed. I so recommend.

Conclusion

For the reasons stated above, I recommend that Petitioner's Motion for Summary Judgment be denied and that the Petition be dismissed. Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within ten (10) days of its receipt. See Fed. R. Civ. P. 72(b); D.R.I. Local R. 32. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

DAVID L. MARTIN
United States Magistrate Judge
March 22, 2005