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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re NESTOR R. MORALES

On Habeas Corpus.

E064500

(Super.Ct.Nos RIC1509092 &  
SCD251686)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. Elaine M. Kiefer, Judge. Petition denied.

Nestor R. Morales, in pro. per., and Cynthia M. Jones, under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Assistant Attorney General, Julie A. Malone and Nikhil Cooper, Deputy Attorneys General, for Respondent.

In this matter we have reviewed the petition, the informal response, and a subsequent reply letter from petitioner. Having determined that petitioner may have

established a right to relief, we set an order to show cause and appointed counsel. Having now read the return, the traverse,<sup>1</sup> and the exhibits thereto, we conclude the petition fails.

### FACTUAL AND PROCEDURAL BACKGROUND

A jury convicted petitioner of drug-related offenses (Health & Saf. Code, §§ 11377, 11378, 11379) on May 5, 2014, and the trial court sentenced him to seven years in prison on July 11, 2014. Petitioner asserts he was initially given a minimum security classification in prison, but at his first classification hearing he was upgraded to a “P-code,” which designates him as a violent offender, because his record includes a robbery conviction from New York State. He complains this deprives him of the right to be eligible for “camps, community correctional facilities, minimum security facilities and work furlough.”

Petitioner attended the classification hearing at which he was P-coded on November 14, 2014. He appealed that decision. On November 24, 2014, an appeals coordinator wrote petitioner to say that his appeal had been rejected for failure to attach a necessary form, and that petitioner had 30 days to resubmit his appeal.

The petition asserts petitioner resubmitted his appeal on December 15, 2014, including signing and dating the form he claims to have deposited in the prison mail on that date. In fact, Exhibit C to the petition is a copy of the resubmitted appeal, bearing

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<sup>1</sup> The traverse was accompanied by a request for judicial notice of the abstract of judgment and probation report from the underlying prosecution, as well as a prison form indicating petitioner’s classification score. As these documents are relevant to the procedural history of this case, and as we have received no objection from real party in interest, we grant the request for judicial notice. (Evid. Code, § 459.)

both petitioner's signature and the date of December 15, 2014. However, the traverse admits that this document was not signed or dated when petitioner submitted it; instead, petitioner asserts he "corrected [his] initial mistake of not signing and dating the form by adding the missing information" at some point on or after January 25, 2015.

On January 14, 2015, the same appeals coordinator who wrote the November 24, 2014 screening letter to petitioner wrote another letter indicating petitioner's appeal had been canceled because the appeals office did not receive the complete appeal until January 7, 2015, which falls outside the 30-day period the November 24, 2014 letter provided for resubmitting the previously omitted attachment. Petitioner then appealed the cancellation of this appeal. One of the exhibits to the return is a second-level appellate response, dated March 17, 2015, telling petitioner his first appeal was properly canceled as untimely. Petitioner denies ever receiving this letter. He asserts he made multiple requests for a response but never received one.

On August 18, 2015, the trial court denied a petition for habeas corpus that petitioner had filed there regarding the P-code he was assigned in November 2014. That court found petitioner failed to exhaust his administrative remedies. This petition followed.

### DISCUSSION

Petitioner argues his P-code is arbitrary because no one exercised discretion to determine whether the New York robbery conviction meant he should be placed in a more secure facility than his base score requires. He asks us to order respondent to change his classification score. In the alternative, he complains the prison failed to

properly process his appeals and asks us to order it to do so. The People respond that this matter is moot because a new classification hearing has occurred, and they also contend petitioner failed to exhaust his administrative remedies. We deny the petition for failure to exhaust remedies by way of prison appeal.

First, we disagree with the People's assessment that the petition is moot.

Although it does appear that a classification hearing has occurred since the hearing that produced the result this petition challenges, the traverse has cited authority indicating that annual classification hearings tend to involve only information "since last review." (Cal. Code Regs., tit. 15, § 3375.4, subds. (a), (b).) In addition, the classification score an inmate has received most recently appears to contribute to the way in which any new classification score is determined at an annual review hearing. (Cal. Code Regs., tit. 15, § 3375.4, subds. (d)-(f) [new classification score is calculated by using most recent "prior preliminary score" and then adjusting it based on new information since the last review].) Because the score petitioner received at his initial classification hearing may still be affecting his classification score at subsequent hearings, we will not find this matter to be moot.

However, we nonetheless find the petition fails on the merits. "As a general rule, a litigant will not be afforded judicial relief unless he has exhausted available administrative remedies." (*In re Dexter* (1979) 25 Cal.3d 921, 925.) Here, that means petitioner needs to have exhausted the appeals he was allowed to file within the prison. (*Ibid.*; see also *In re Serna* (1978) 76 Cal.App.3d 1010 [partial granting of habeas petition by trial court reversed because petitioners had not completed the final step in the prison

administrative process by obtaining third-level review]; see also *In re Muszalski* (1975) 52 Cal.App.3d 500.) We find neither that an error occurred with respect to the handling of the appeals, which means we will not order the appeals to be reinstated, nor that petitioner exhausted his administrative remedies, which means we cannot and will not reach the merits of his contentions regarding the classification score he received in 2014.

Petitioner argues his first appeal was improperly canceled as untimely because the date that governs his resubmission of documents is the date he placed the appeal in the prison mail, and that date was within 30 days of the November 24, 2014 letter requesting the document petitioner failed to attach. We need not reach the issue of the timeliness of this resubmission, because, as the traverse admits, the appeal documents petitioner submitted in conjunction with his first appeal were unsigned and undated when he submitted them. An inmate appeal may be rejected if it “is incomplete; for example, the inmate or parolee has not provided a signature and/or date on the appeal forms in the designated signature/date blocks provided.” (Cal. Code Regs., tit. 15, § 3084.6, subd. (b)(13).) Therefore, there was cause for the denial of relief on the first appeal.

Petitioner contends this reason cannot support the cancellation of his first appeal because the letter denying that appeal said the denial was for untimeliness rather than the failure to sign or date the appeals forms. What petitioner ignores is that, “ ‘No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the

considerations which may have moved the trial court to its conclusion.’ ” (*D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) Petitioner has offered, and we discern, no reason why this rule should apply to appeals from trial court judgments but not to attacks on appeals from prison classification decisions. Since the failure to date or sign the appeals forms provided cause for the rejection of petitioner’s first appeal, we will not disturb that decision simply because the prison provided another reason that may or may not have been valid. Because the appeal from petitioner’s classification decision was properly canceled, petitioner did not exhaust his administrative remedies.

No more availing is petitioner’s complaint that he was unfairly prevented from exhausting administrative remedies because he never received a decision on the appeal from the calculation of his appeal. As we have just explained, the appeal of petitioner’s initial classification score was properly canceled. An appeal from that decision could therefore offer no remedy.

DISPOSITION

The petition for writ of habeas corpus is denied.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

McKINSTER  
J.