

OCT 23 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL McCANN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>RICK HILL, Warden of FSP,</p> <p>Respondent - Appellee.</p>
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No. 12-15820

D.C. No. 2:11-cv-01463-LKK

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted October 15, 2013**

Before: FISHER, GOULD, and BYBEE, Circuit Judges.

California state prisoner Michael McCann appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition challenging a prison disciplinary violation for over-familiarity towards staff. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court concluded that McCann's claims were unexhausted, or alternatively, procedurally barred. We decline to review the district court's procedural ruling and instead affirm the denial of habeas relief because McCann's claim fails on the merits. *See White v. Klitzkie*, 281 F.3d 920, 922 (9th Cir. 2002) (this court can affirm on any ground supported by the record even if the issue is not included in the certificate of appealability). The record reflects that McCann received all process that was due and that some evidence supports the disciplinary findings. *See Superintendent v. Hill*, 472 U.S. 445, 455 (1985) (some evidence must support decision that results in revocation of good time credits); *Wolff v. McDonnell*, 418 U.S. 539, 563-70 (1974) (setting forth procedural due process requirements in prison disciplinary proceedings).

AFFIRMED.