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8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SACRAMENTO**

11 **CARL DEVON POWELL,**

12 Petitioner,

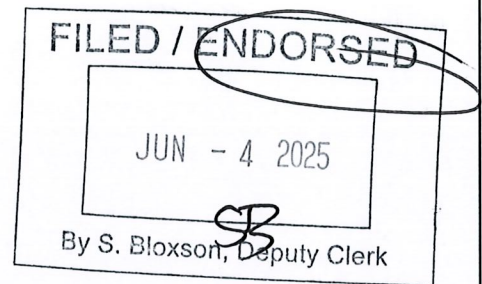
13 v.

14 **JASON SCHULTZ, in his official capacity,**

15 Respondent.

Case No. **25HC00211**

**PETITION FOR WRIT OF HABEAS  
CORPUS AND MEMORANDUM OF  
POINTS AND AUTHORITIES**



BY FAX

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1 **PETITION FOR WRIT OF HABEAS CORPUS**

2 **INTRODUCTION**

3 1. Petitioner Carl Powell brings this petition to challenge the December 8, 2022,  
4 disciplinary action against him by the California Department of Corrections and Rehabilitation  
5 (“CDCR”). A Senior Hearing Officer (“SHO”) found Mr. Powell guilty of various infractions related to  
6 alleged smuggling of contraband into prison through receipt of a package based only on the facts that  
7 Mr. Powell’s name appeared on an unattached mailing slip, and that the contraband was concealed. This  
8 evidence fails to establish that Mr. Powell had the requisite intent for a finding of guilt under *In re*  
9 *Banks* (2023) 97 Cal. App. 5th 463 (*Banks*). CDCR accordingly disciplined Mr. Powell in violation of  
10 title 15, section 3320, subdivision (l) of the California Code of Regulations, which requires proof by a  
11 preponderance of evidence. (Cal. Code Regs., tit. 15, § 3320, subd. (l) (Exhibit 1) at CDP 006.)

12 2. The disciplinary action against Mr. Powell also implicates his right to due process  
13 because he was deprived of good time credits. Under *Banks*, this Court cannot uphold the disciplinary  
14 decision under the “some evidence” standard as required to comply with due process.

15 3. Mr. Powell seeks an order from this Court directing CDCR to vacate the December 8,  
16 2022, findings of guilt.

17 **PARTIES**

18 4. Petitioner, Carl Powell (#J43000), was initially incarcerated at San Quentin State Prison,  
19 but was transferred on April 18, 2024, and is currently incarcerated at California State Prison  
20 Sacramento (“CSP Sacramento”).

21 5. Respondent, Jason Schultz, is the Acting Warden at CSP Sacramento. Warden Schultz is  
22 Mr. Powell’s legal custodian.

23 **JURISDICTION AND VENUE**

24 6. This Court has jurisdiction over this habeas petition under article VI, section 10 of the  
25 California Constitution and Penal Code section 1473.

26 7. Venue is proper in the Superior Court of California, County of Sacramento because Mr.  
27 Powell is currently incarcerated in this county and is confined pursuant to his conviction and sentence  
28 by a superior court of this county.

8. This habeas petition is necessary because Mr. Powell has no other plain, speedy, or adequate remedy at law for the violations of his rights under title 15, section 3320, subdivision (l) of the California Code of Regulations; article I, section 7 of the California Constitution; and the Fourteenth Amendment to the U.S. Constitution.

## STATEMENT OF FACTS

**I. COMMITMENT OFFENSE, DIRECT APPEAL, AND HABEAS PROCEEDINGS FOR UNDERLYING CONVICTION**

9. Mr. Powell is presently incarcerated pursuant to a jury conviction on September 1, 1994, in Case Number 113126, of one count of first-degree murder under Penal Code section 187(a); one count of robbery under Penal Code section 211; and three counts of theft under Penal Code section 487(1), with enhancements for use of a firearm under Penal Code section 12022.5(a) on the murder and robbery counts. (Report – Indeterminate Sentence, or Other Sentence Choice; Abstract of Judgment – Prison Commitment; and Commitment and Judgment of Death (Nov. 10, 1994) (Exhibit 2) at CDP 008-013.)

10. On November 10, 1994, the Superior Court of Sacramento County sentenced Mr. Powell to death as to the murder count, eight years and four months as to the remaining counts, and restitution in the amount of \$1,000. (*Id.* at CDP 014-017.)

11. In Case Number S043520, the Supreme Court of California affirmed his direct appeal on September 17, 2019, rendering Mr. Powell's conviction and sentence final. (*People v. Powell* (2018) 6 Cal.5th 136.)

12. Mr. Powell filed a Petition for Writ of Habeas Corpus in the Supreme Court of California on October 27, 2012, which was transferred to this Court on April 10, 2019, and assigned Case Number 19HC00247. (Cal. Supreme Ct. Transfer Order (Apr. 10, 2019) (Exhibit 3) at CDP 019.)

13. On November 16, 2020, this Court issued an Order to Show Cause as to four claims raised in Mr. Powell's petition: claim 8 (ineffective assistance of counsel investigating and presenting evidence of mental health disabilities), claim 10 (ineffective assistance of counsel in investigating and presenting mitigating family and social history evidence), claim 11 (ineffective assistance of counsel in

failing to retain a trauma expert), and claim 13 (cumulative error). (Order to Show Cause Regarding Petition for Writ of Habeas Corpus (Nov. 16, 2020) (Exhibit 4) at CDP 021-022.)

14. On August 12, 2021, the Court additionally issued an Order to Show Cause as to claim 12 (intellectual impairment under *Atkins v. Virginia* (2002) 536 U.S. 304). (Ruling on Motion for Reconsideration as to Claim 12; and Order to Show Cause (Aug. 12, 2021) (Exhibit 5) at CDP 025-026.) The State filed a Return as to each of these four claims, and Mr. Powell filed a Traverse.

15. On October 4, 2024, Mr. Powell filed an Amended Petition for Writ of Habeas Corpus in this Court, adding a claim under the California Racial Justice Act (“RJA”), Penal Code section 745. On October 29, 2024, the Court issued an Order to Show Cause as to this claim. (Order to Show Cause Regarding Petition for Writ of Habeas Corpus as to Claim XIV (Oct. 29, 2024) (Exhibit 6) at CDP 029-034.) Briefing on this claim is currently stayed while the parties engage in settlement negotiations. (Order Granting Stipulation to Continue Filing of Joint Status Conference Statement and Status Conference (Apr. 15, 2025) (Exhibit 7) at CDP 037.) A status conference is scheduled for July 25, 2025. (*Id.*)

## **II. 2022 DISCIPLINARY ACTION**

16. On November 16, 2022, Correctional Officer J. Serrato was working as the Receiving and Release Officer at San Quentin. (Staff Narrative of Officer Serrato, Log No. 48109 (Exhibit 8) at CDP 040.) Officer Serrato noticed a package from the warehouse that “appeared to be tampered with and opened” in the Receiving and Release Parole Room (“R&R Room”). (*Id.*; Rules Violation Report, Log No. 7247768 (Exhibit 9) at CDP 042.) He proceeded to inspect the package and examined a “halfway open” cereal box. (Exhibit 8 at CDP 040.) Officer Serrato could see a clear zip lock bag inside the cereal box, and after removing the zip lock bag, found it contained three cellphones and multiple chargers. (*Id.*) He placed the zip lock bag back into the cereal box, secured the box, and contacted Investigative Services Officer F. Brenes. (*Id.*)

17. Officer Serrato’s discovery of the package in a “tampered with and opened” condition is the earliest evidence in the record concerning this package. The record provides no evidence regarding CDCR’s receipt of the package in a sealed condition, the chain of custody of the package prior to

Officer Serrato’s discovery, or how the package came to be “tampered with and opened.” The record does not reflect whether CDCR took any measures to investigate these questions.

18. Before Officer Brenes took possession of the package, he photographed the opened package as it was discovered by Officer Serrato. (Exhibit 9 at CDP 042; Photographs from Rules Violation Report, Log No. 7244227 (Exhibit 13), Photos (1)-(6), at CDP 058.) On further inspection of the package, Officer Brenes reported that the package included an unattached packing slip addressed to Carl Powell (J43000) located inside the package. (*Id.*, Photos (4) and (28), at CDP 058.)

19. Officer Brenes photographed the shipping label affixed to the outside of the package but did not document any mailing or return address information. (*Id.*, Photo (5), at CDP 058; Exhibit 9 at CDP 042.) The photograph taken of the shipping label shows the package was addressed to “SAN QUENTIN STATE PRISON 1 MAIN STREET SAN QUENTIN CA 94964” but does not designate any specific intended recipient. (Exhibit 13, Photo (5), at CDP 058.) The photograph also shows a sender’s address was included on the shipping label, but the address is not legible in the photograph provided by CDCR, and the label does not appear to contain the shipper’s name. (*Id.*)

20. Inside the package, Officer Brenes found and photographed:

- a) One box of Bite-Size Frosted Wheat, which contained three cell phones, two containers of crazy glue, and one package of suspected methamphetamine. (Exhibit 9 at CDP 042.)
- b) One box of Cheerios, which contained a clear bag containing three cell phones, charging cords, and a SIM access tool. (Rules Violation Report, Log No. 7244227 (Exhibit 10) at CDP 046.)
- c) One box of Frosted Flakes, which contained four cell phones, four SIM cards, and two knives. (*Id.*; Rules Violation Report, Log No. 7243881 (Exhibit 11) at CDP 050.)
- d) Three boxes of Toast’ems, one of which contained a hacksaw cut into four pieces and four “mini” plastic handcuff keys. (Rules Violation Report, Log No. 7244093 (Exhibit 12) at CDP 054.)
- e) One box of Unicorn Cakes, which contained a Channel Lock wrench. (*Id.*)



1 f) One box of Nestle hot chocolate mix. (*Id.*)

2 g) One box of Honey Graham Crackers, containing five cell phones. (Exhibit 10 at  
3 CDP 047.)

4 21. Officer Brenes placed the suspected methamphetamine into an evidence bag, which was  
5 subsequently sent to the Department of Justice for testing. (Exhibit 9 at CDP 042.) On December 2,  
6 2022, San Quentin State Prison received the results from the Department of Justice indicating positive  
7 results for methamphetamine, with an approximate weight of 1.425 grams. (*Id.*)

8 22. Mr. Powell was charged with four separate violations of the California Code of  
9 Regulations and issued Rules Violation Reports (“RVR”) as follows:

10 a) Conspiring to introduce a controlled substance, a violation of California Code of  
11 Regulations, title 15, section 3016, subdivision (d). (Exhibit 9 at CDP 042-044.)

12 b) Conspiring to possess a cellular telephone, a violation of California Code of  
13 Regulations, title 15, section 3006, subdivision (a). (Exhibit 10 at CDP 046-048.)

14 c) Conspiring to furnish equipment for an escape attempt, a violation of California  
15 Code of Regulations, title 15, section 3015, subdivision (d). (Exhibit 12 at CDP  
16 054-056.)

17 d) Conspiring to possess a deadly weapon, a violation of California Code of  
18 Regulations, title 15, section 3006, subdivision (a). (Exhibit 11 at CDP 050-052.)

19 23. Each RVR cited as “evidence that the sender and the inmate formulated a conspiracy”  
20 only that (1) Mr. Powell’s “name and CDC number” were on the unattached packing slip, and (2) that  
21 the contraband was “concealed or disguised.” (Exhibit 9 at CDP 042; Exhibit 10 at CDP 047; Exhibit 11  
22 at CDP 050; and Exhibit 12 at CDP 054.)

23 24. Mr. Powell did not receive clear photographs of the mailing label or packing slip  
24 referenced in the RVRs. Mr. Powell received no information, and no evidence was presented during his  
25 disciplinary hearing, regarding the identity of the sender. The contraband itself was not preserved; it is  
26 unknown whether the package, mailing label, or packing slip were preserved.

27 25. CDCR held a disciplinary hearing at San Quentin on December 8, 2022, on all four  
28 RVRs. (Disciplinary Hearing Results as to Log Nos. 7247768, 7244227, 7243881, and 7244093

(Exhibit 19) at CDP 079-102.) Mr. Powell pleaded not guilty to all four charges of conspiracy, stating “I’m not guilty. I didn’t have a package coming in. [I]t isn’t mine.” (*Id.*)

26. The Senior Hearing Officer (“SHO”) found Mr. Powell guilty on all four charges. (*Id.*) As to each charge, the SHO weighed Mr. Powell’s not guilty plea, photographs of the contraband, and the incident report “detailing the intricate packaging used to conceal the contraband”; the SHO found that “the sophistication in the method the contraband was carefully concealed and disguised within the package is evidence the sender and the inmate formulated a conspiracy to introduce contraband into the prison.” (*Id.*)

27. Mr. Powell was assessed the following cumulative punishments for his four rules violations:

- a) Credit loss of a total of 570 days;
- b) Loss of phone privileges for 90 days;
- c) Loss of yard recreation privileges for 10 days;
- d) Loss of packages privileges for 90 days;
- e) Loss of family visits for three years;
- f) Privilege group C imposed for 30 days;
- g) Loss of pay for 90 days;
- h) Loss of canteen privileges for 30 days;
- i) Property restrictions for 30 days;
- j) Loss of visiting privileges for 365 days;
- k) Loss of contact visiting privileges for 730 days; and
- l) Mandatory drug testing for one month. (*Id.*)

### **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28. On January 4, 2023, Mr. Powell filed a grievance, CDCR Form 602-1, challenging each of the four December 8, 2022, findings of guilt as based on insufficient evidence. (Carl Powell Grievance (Jan. 4, 2023) (Exhibit 14) at CDP 060-061.)

29. On February 25, 2023, the Office of Grievances denied Mr. Powell’s grievance, finding that there had been no violations of due process and that the findings of guilt were supported by a

preponderance of evidence. (Office of Grievances Decision (Feb. 25, 2023) (Exhibit 15) at CDP 063-065.)

30. Mr. Powell submitted an appeal on April 2, 2023, which again argued that the guilty findings were based on insufficient evidence. (Carl Powell Appeal of Grievance (Exhibit 16) at CDP 067-068.) Mr. Powell also alleged that the hearing officer failed to consider the affirmative defense that he was set-up, since the items were easily discoverable. (*Id.*) Internal guidance provided by CDCR to all wardens states that, “[i]n cases where the drugs are not concealed or disguised we must assert that the inmate may have been the subject of a set up and view this as an affirmative defense[.]” (CDCR Memorandum to Wardens, “Initiating Disciplinary and Criminal Action Against Inmates Who are Delivered and Conspire to Introduce Controlled Substances Through the Mail or in Quarterly Packages” (Jan. 14, 2000) (“Memo”) (Exhibit 17) at CDP 070-072.)

31. On August 29, 2023, the Office of Appeals denied Mr. Powell’s appeal, exhausting his administrative remedies. The Office of Appeals Decision found that the SHO’s findings were supported by a preponderance of evidence, citing CDCR’s Memo. (Letter to Carl Powell from Office of Appeals (Aug. 29, 2023); Office of Appeals Decision (June 7, 2023) (Exhibit 18) at CDP 074-077.) Specifically, the CDCR Memo states that “[t]he inmate’s name on an envelope or package, standing alone, may not establish, by a preponderance of the evidence, that the inmate conspired to introduce drugs into a prison,” but provides that additional evidence which may be relied upon includes the “[m]ethod the drugs were packaged or secreted.” (Exhibit 17 at CDP 071.) Based on this guidance, the Office of Appeals found that “the reporting employee properly documented the finding of the contraband and the concealment manner, [from] which can be inferred that the recipient of the package would be knowledgeable in where to look for the contraband.” (Exhibit 18 at CDP 075.)

### CONTENTIONS

32. The December 8, 2022, disciplinary action violates Mr. Powell’s right under title 15, section 3320, subdivision (l) of the California Code of Regulations to not have disciplinary findings imposed except as supported by a preponderance of the evidence.

1           33.     The December 8, 2022, disciplinary action violates Mr. Powell’s right to due process of  
2 law because he was deprived of conduct credits based on a disciplinary finding that was not supported  
3 by sufficient evidence of guilt.

4                                   **PRAYER FOR RELIEF**

5           Mr. Powell is without a remedy save by writ of habeas corpus.

6           WHEREFORE, Mr. Powell prays the Court:

- 7           1.     Grant a writ of habeas corpus;  
8           2.     Vacate the December 8, 2022, disciplinary action; and  
9           3.     Grant any further relief the Court deems proper.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Mr. Powell was found guilty of four charges of conspiracy absent any evidence of agreement.  
4 The only evidence offered to show Mr. Powell’s agreement to receive contraband is (1) an unaffixed  
5 shipping label bearing his name and address inside a “tampered with and opened” package, and (2) the  
6 fact that the contraband was minimally concealed. In *In re Banks* (2023) 97 Cal. App. 5th 463, the  
7 California Court of Appeal held precisely these categories of evidence insufficient to support a finding  
8 of conspiracy. Meanwhile, other evidence, including proof identified as relevant in CDCR’s own internal  
9 guidance, undermines the SHO’s findings of guilt. Because the disciplinary findings against Mr. Powell  
10 are not supported by any evidence of an agreement, the findings fail to meet the evidentiary standard  
11 required by California Code of Regulations, title 15, section 3320, subdivision (l) and under the State  
12 and Federal Due Process clauses. The disciplinary findings against Mr. Powell must be vacated.

13 **LEGAL STANDARD**

14 Habeas corpus is the proper means of challenging disciplinary findings for prison rule violations.  
15 (*In re Rigsby* (2019) 38 Cal. App. 5th 1011, 1017.) An incarcerated person may challenge a prison  
16 disciplinary decision as inconsistent with prison regulations, (*In re Marti* (2021) 69 Cal. App. 5th 561,  
17 566, fn. 1 [habeas may be used to “broadly vindicate rights in confinement, including ‘not only statutory  
18 or constitutional violations, but also violations of administrative regulations.’”] [quoting *Gomez v.*  
19 *Superior Court* (2012) Cal. 4th 293, 309, fn. 10]; *see, e.g., In re Oliveras* (2024) 103 Cal. App. 5th 771;  
20 *see also In re Dannenberg* (2005) 34 Cal. 4th 1061; *In re Van Geldern* (1971) 5 Cal. 3d 832), or based  
21 on a violation of constitutional due process (*see Rigsby, supra*, 38 Cal. App. 5th at pp. 1016-17). This  
22 Court’s review is for “some evidence.” (*Superintendent, Massachusetts Correctional Institution,*  
23 *Walpole v. Hill* (1985) 472 U.S. 445, 455; *In re Dikes* (2004) 121 Cal. App. 4th 825, 829.)

24 **ARGUMENT**

25 **I. CDCR’S DISCIPLINARY FINDINGS AGAINST MR. POWELL WERE NOT BASED ON**  
26 **A PREPONDERANCE OF EVIDENCE AS REQUIRED BY TITLE 15, SECTION 3320,**  
27 **SUBDIVISION (L) OF THE CALIFORNIA CODE OF REGULATIONS.**

28 The disciplinary decision against Mr. Powell must be vacated because the findings were based  
on insufficient evidence. The California Code of Regulations provides that “[a]ny finding of guilt shall

1 be based upon determination by the official(s) conducting the disciplinary hearing that a preponderance  
2 of evidence submitted at the hearing substantiates the charge.” (Cal. Code Regs., tit. 15, § 3320, subd.  
3 (I).) Mr. Powell was found guilty of all four RVRs for conspiracy based on evidence that a package of  
4 concealed contraband was discovered with an unattached mailing slip bearing his name. (Exhibit 19 at  
5 CDP 082, 088, 094, and 100.) However, binding authority establishes that being the addressee of a  
6 package containing concealed contraband is, standing alone, not evidence of an agreement to form a  
7 conspiracy, regardless of any sophistication in the method of concealment. (*See Banks, supra*, 97 Cal.  
8 App. 5th 463.) In reaching a contrary decision, CDCR relied on internal guidance in the form of a  
9 Memo—that pre-dates the *Banks* opinion—regarding disciplinary decisions in cases of contraband  
10 shipped through the mail. (*See* Exhibit 17 at CDP 070-072.) The Memo is legally wrong on what  
11 constitutes sufficient evidence of agreement, but it bears noting that a meaningful review of the  
12 evidentiary factors it identifies as relevant weigh heavily *in favor* of Mr. Powell. (Exhibit 17 at CDP  
13 071.) Because Mr. Powell’s guilt was not proven by a preponderance of the evidence, the findings must  
14 be reversed, and this Court should issue a writ of habeas corpus.

15           **A.       CDCR Relied on Evidence That is Insufficient to Establish an Agreement to Form a**  
16           **Conspiracy.**

17           Conspiracy requires an agreement by two or more persons to commit an unlawful act. (*People v.*  
18 *Ware* (2022) 14 Cal. 5th 151, 163.) Agreements may be inferred from “the conduct of defendants in  
19 mutually carrying out a common illegal purpose, the nature of the act done, the relationship of the  
20 parties[,] [and] the interests of the alleged conspirators.” (*People v. Superior Court (Quinteros)* (1993)  
21 13 Cal. App. 4th 12, 20.) Mr. Powell was charged with four conspiracies, each of which hinged on proof  
22 of his agreement to introduce contraband through the mail. CDCR found Mr. Powell guilty on all four  
23 charges, citing as proof of agreement only that he was the purported addressee of a package containing  
24 contraband (per an unattached packing slip), and the “sophistication in the method the contraband was  
25 carefully concealed and disguised within the package,” which the SHO described as “evidence the  
26 sender and the inmate formulated a conspiracy to introduce contraband into the prison.” (Exhibit 19 at  
27 CDP 082, 088, 094, and 100.) This is insufficient as a matter of law.  
28

1 In *Banks*, a prison intercepted two envelopes with strips of a controlled substance, Suboxone,  
2 glued under the flaps of each; both envelopes bore Banks' CDCR number. (*Banks, supra*, 97 Cal. App.  
3 5th at p. 465.) Banks was found guilty of conspiracy to introduce a controlled substance based on  
4 evidence that the envelope was addressed to him and the controlled substance was concealed.<sup>1</sup> (*Id.* at p.  
5 466.) The Court of Appeal held this evidence insufficient to support the disciplinary finding, reasoning  
6 that "[w]hile some evidence does support the conclusion the sender of the envelopes intended to  
7 conceal the drugs and targeted inmate Banks, *no evidence* shows inmate Banks made any agreement  
8 with the sender." (*Id.* at p. 468 [italics added].) The incarcerated person's name on the package and  
9 concealment of the controlled substance were insufficient to establish that "Banks knew about the  
10 concealed strips, solicited the envelopes, communicated with anyone about the envelopes, or had any  
11 conduct consistent with the illegal purpose of introducing the Suboxone into the prison." (*Id.*) The court  
12 also noted the lack of any evidence "about the sender or the sender's relationship with inmate Banks  
13 such that it would be reasonable to infer an agreement between the two." (*Id.*) That the sender plainly  
14 identified Banks as the intended recipient was insufficient to establish an agreement as "[t]he sender  
15 may have had any number of positive or negative motives in targeting inmate Banks without his  
16 agreement." (*Id.*)

17 The dispositive facts in *Banks* are indistinguishable from Mr. Powell's case, and thus *Banks*  
18 controls the outcome. As in *Banks*, the only evidence cited for agreement was the concealment of  
19 contraband in a package containing a slip addressed to Mr. Powell. (Exhibit 19 at CDP 082, 088, 094,  
20 and 100.) Indeed, there is even less evidence of Mr. Powell's agreement than there was for the  
21 petitioner in *Banks*. Unlike the sealed, addressed envelopes in *Banks*, the package containing the  
22 contraband in Mr. Powell's case was initially found unsealed, "tampered with and opened." (Exhibit 8  
23 at CDP 040.) The only evidence linking Mr. Powell to the package was an unattached slip with his  
24 name that was found inside the unsealed package, not on the mailing label affixed to the package itself.  
25 (*Id.*; Exhibit 9 at CDP 042; Exhibit 13, Photo (5), at CDP 058.) Moreover, while the controlled  
26 substance in *Banks* had been carefully concealed within the glue of envelopes, here, the first time

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27 <sup>1</sup> The hearing officers also relied on the value of the controlled substance as proof of an agreement,  
28 reasoning that the sender would not risk losing the contents by sending them blindly. (*Banks, supra*, 97  
Cal. App. 5th at p. 466.) The court found this unpersuasive. (*Id.* at p. 468.)

1 CDCR viewed the package, according to the record, contraband was immediately visible. (*Id.*; Exhibit  
2 13, Photos (1)-(4), at CDP 058.) These circumstances indicate the possibility that the contraband or  
3 address slip was placed in the package by a third party after the package was opened and further  
4 underscore the wide range of alternative explanations that do not involve any agreement by Mr. Powell.  
5 As the court noted in *Banks*, the sender may have had any number of positive or negative motives in  
6 targeting Mr. Powell *without* his agreement. (*Banks, supra*, 97 Cal. App. 5th at p. 463.) Under *Banks*,  
7 CDCR’s guilty findings against Mr. Powell are not supported by a preponderance of the evidence in  
8 violation of title 15, section 3320, subdivision (l).

9 **B. The SHO Failed to Consider Evidence That Supports a Not Guilty Finding Under**  
10 **CDCR’s Own Internal Guidance.**

11 Beyond the *Banks* decision, CDCR’s Memo underscores the importance of evidence that, in Mr.  
12 Powell’s case, undermines the finding of guilt. The Memo points to “sophisticated” or “careful”  
13 methods of concealment as evidence of a conspiracy to introduce contraband based on the theory that if  
14 an unsuspecting recipient would miss the contraband, it may be inferred that the recipient knew where  
15 the contraband was and how to get it. (Exhibit 17 at CDP 070-071.) By way of example, the Memo  
16 cites as probative “an incident where the drugs were mixed into a glue-like substance which was used  
17 to affix paper characters to pages of a homemade book sent to an inmate”; “incidents where letters  
18 contained writing paper that was saturated with drugs”; “items being altered and drugs secreted within  
19 the items then resealed; therefore, having the appearance that the items are factory sealed”; and  
20 “incidents where a canning device was used to secret[e] drugs in cans that appeared to be factory sealed  
21 and contain the labels’ contents.” (*Id.*)

22 To the extent the Memo conflicts with *Banks* by suggesting that the method of concealment in  
23 combination with one’s name listed as the intended recipient may substantiate a finding of guilt, *Banks*  
24 is controlling. But the method of concealment in Mr. Powell’s case is nonetheless distinguishable from  
25 those cited as probative by the Memo. The contraband in Mr. Powell’s case was hardly concealed, as it  
26 was immediately apparent to Officer Serrato: from his initial view of the package, he was able to see an  
27 opened cereal box with a zip lock bag inside. (Exhibit 8 at CDP 040; Exhibit 13, Photos (1)-(4), at CDP  
28 058). Moreover, each box of food in the package contained multiple items of contraband; anyone who



1 handled the boxes would have immediately noticed that they were significantly heavier than they  
2 should have been. (*See, e.g.*, Exhibit 10 at CDP 046-047 [One box of Bite-Size Frosted Wheat  
3 contained three cell phones and two containers of crazy glue; one box of Cheerios contained three cell  
4 phones, charging cords, and a SIM access tool; one box of Honey Graham Crackers contained five cell  
5 phones].) And of course, anyone who opened the boxes—as any recipient would—would have  
6 discovered the contraband within. (*See e.g.*, Exhibit 13, Photos (8), (15), (19), (24), at CDP 058  
7 [contraband was contained in clear plastic bags placed within otherwise empty food boxes].) Mr.  
8 Powell’s case thus fits within the Memo’s discussion of cases where contraband is “*not* concealed or  
9 disguised,” in which CDCR’s guidance states, “we must assert that the inmate may have been the  
10 subject of a set up and view this as an affirmative defense that must be raised at the disciplinary  
11 hearing.” (Exhibit 17 at CDP 071-072 [*italics added*].) But despite being raised by Mr. Powell, this  
12 defense was not addressed in the SHO’s decision.

13 CDCR also failed to consider other favorable evidence identified by the Memo. In particular,  
14 the Memo states that a SHO may consider and rely upon: (1) statements by the inmate; (2) conduct by  
15 the inmate; (3) search of the inmate’s cell and property; (4) evidence of the inmate’s recent drug use;  
16 (5) review of the inmate’s criminal history for evidence of past drug use or sales; (6) review of the  
17 inmate’s affiliation with inmates or inmate gangs involved in the distribution of drugs; (7) examination  
18 of any correspondence or writings inside the envelope or package; (8) review of mail and visiting files  
19 to determine if the sender had previous contact with the inmate; (9) review of any available phone  
20 records or correspondence; and (10) information provided by other sources including informants or  
21 other law enforcement agencies. (Exhibit 17 at CDP 071.)

22 Each of these factors underscores the lack of evidence of Mr. Powell’s guilt. Mr. Powell  
23 cooperated fully with staff. When staff first came to his cell regarding the package, he immediately  
24 complied with orders to cuff up and exit his cell while officers searched his cell and belongings. This  
25 search unearthed no evidence linking Mr. Powell to any conspiracy, nor does Mr. Powell have any  
26 history of drug use or distribution of drugs or other contraband at San Quentin. (SOMS Disciplinary  
27 Summary, ISSS003A – Rules Violation Reports (Exhibit 20) at CDP 104.)  
28

Under *Banks* and even CDCR’s own guidance, there is insufficient evidence to find Mr. Powell guilty of conspiracy. Because the guilty findings were not supported by a preponderance of the evidence in accordance with title 15, section 3320, subdivision (l), the Court should grant the petition.

## **II. THE DISCIPLINARY DECISION VIOLATED MR. POWELL’S DUE PROCESS RIGHTS AS THERE WAS NO EVIDENCE TO SUPPORT A GUILTY FINDING.**

The United States and California Constitution prohibit the State from depriving any person of life, liberty, or property without due process of law. (U.S. Const., 14th Amend., § 1; Cal. Const., art. I, §§ 7, subd. (a), 15.) A procedural due process challenge raises two issues: “the first asks whether there exists a liberty or property interest which has been interfered with by the State” and “the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” (*Kentucky Dept. of Corrections v. Thompson* (1989) 490 U.S. 454, 460 (*Thompson*).) Pertinent here, individuals have a protected liberty interest in good time credits, and as a result, due process requires that a decision to revoke such credits be supported by “some evidence.” (*Hill, supra*, 472 U.S. at p. 455.) The disciplinary decision against Mr. Powell, resulting in a loss of his good time credits, is not supported by *any* evidence and therefore violates due process.

### **A. Mr. Powell Has a Protected Liberty Interest in the Good Time Credits Revoked by CDCR’s Disciplinary Decision Against Him.**

In the prison setting, a “[p]rotected liberty interest[] ‘may arise from two sources—the Due Process Clause itself and the laws of the States.’” (*In re Ilasa* (2016) 3 Cal. App. 5th 489, 497 [quoting *Thompson, supra*, 490 U.S. at p. 460].) State regulations which “inevitably affect the duration of [a] sentence” create a liberty interest protected by due process. (*Sandin v. Conner* (1995) 515 U.S. 472, 483-484, 487.) Because California has “legislatively granted inmates the right to conduct credits and created specific statutory and administrative procedural safeguard mechanisms that must be invoked before an inmate can be deprived of conduct credits, a vested liberty interest protected by the due process clause is created.” (*In re Johnson* (2009) 176 Cal. App. 4th 290, 297.) While “the Due Process Clause itself does not create a liberty interest in credit for good behavior” the liberty interest lies “in a ‘shortened prison sentence’ which result[s] from good time credits.” (*Sandin, supra*, 515 U.S. at pp. 477-78.)

1 The disciplinary decision against Mr. Powell resulted in his cumulative loss of 570 days of good  
2 time credits. (Exhibit 19 at CDP 082, 088, 094, 100.) Although Mr. Powell’s credits cannot apply to his  
3 current sentence because he is on death row, he has filed a Petition for Writ of Habeas Corpus  
4 challenging his conviction and sentence. This Court issued an Order to Show Cause on Mr. Powell’s  
5 claim under the Racial Justice Act (RJA). Mr. Powell’s claims are strong on the facts and the law, and he  
6 has a significant probability of prevailing, including through possible settlement. Success on these  
7 claims could result in vacation of his sentence and/or conviction, potentially making him eligible for  
8 parole. At that point, Mr. Powell’s loss of good time credits could delay his eligibility by approximately  
9 two years.

10 The erroneous disciplinary findings will also impact any prospective consideration of Mr.  
11 Powell’s suitability for parole by the Parole Board. Mr. Powell was found guilty of four serious RVRs  
12 for conspiring to introduce a controlled substance, furnish equipment for an escape attempt, possess a  
13 cellular telephone, and possess a deadly weapon—findings that, if left undisturbed, will weigh heavily  
14 on the ultimate question of whether Mr. Powell is rehabilitated and safe for release. (*See Marti, supra*,  
15 69 Cal. App. 5th at p. 567 [noting the impact documented misconduct may have on future prison  
16 decisions and parole considerations as the “obvious decision that might typically be impacted”]; *see*  
17 Cal. Code Regs., tit. 15, § 2402, subd. (c)(6) [“Circumstances tending to indicate unsuitability  
18 include...[t]he prisoner engaged in serious misconduct in prison or jail”].) Further, these four RVRs are  
19 the only instances of serious misconduct on Mr. Powell’s record and so dramatically alter the balance of  
20 his institutional history, potentially overwhelming the evidence of his substantial programming,  
21 education, and achievements.

22 Because of the impact the loss of credits will have on the duration of Mr. Powell’s sentence, Mr.  
23 Powell has a protected liberty interest in his good time credits, entitling him to due process protections.

24 **B. The Disciplinary Decision Must Be Vacated Under the “Some Evidence” Standard**  
25 **Because There is No Evidence to Support the Guilty Findings.**

26 A “revocation of good time does not comport with ‘the minimum requirements of procedural  
27 due process,’ [] unless the findings of the prison disciplinary board are supported by some evidence in  
28 the record.” (*Hill*, 472 U.S. at p. 454 [citation omitted].) Accordingly, a reviewing court may only

1 uphold a disciplinary decision supported by “some evidence.” (*Id.*; *Dikes, supra*, 121 Cal. App. 4th at p.  
2 829.)

3 Determining whether the finding is supported by some evidence “does not require examination  
4 of the entire record, independent assessment of the credibility of witnesses, or weighing of the  
5 evidence;” rather, “the relevant question is whether there is any evidence in the record that could  
6 support the conclusion reached by the disciplinary board.” (*Hill, supra*, 472 U.S. at pp. 455-56; *see also*  
7 *In re Zepeda* (2006) 141 Cal. App. 4th 1493, 1498.) Nevertheless, “[a]pplication of this deferential  
8 standard ‘does not mean that courts simply rubber-stamp’ the administrative decision.” (*In re Cabrera*  
9 (2013) 216 Cal. App. 4th 1522, 1533, *as modified on denial of reh’g* (July 1, 2013) [quoting *In re Ross*  
10 (2009) 170 Cal. App. 4th 1490, 1503].)

11 The prison disciplinary decision against Mr. Powell must be vacated because it is not supported  
12 by any evidence. As analyzed in Section I, under *Banks*, being the addressee of a package containing  
13 concealed contraband is not evidence of an agreement between Mr. Powell and the sender to formulate  
14 a conspiracy to introduce contraband. Because the decision to revoke Mr. Powell’s good time credits is  
15 not based on *any* evidence of conspiracy under prevailing law, it does not meet the “some evidence”  
16 standard of review required under due process.

### 17 CONCLUSION

18 For the foregoing reasons, the Court should issue a writ of habeas corpus and vacate the  
19 disciplinary findings in this case.  
20

21 Dated: June 4, 2025


Respectfully submitted,

22 By: 

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I am an attorney admitted to practice law in the State of California. I represent Petitioner Carl D. Powell, who is confined and restrained of his liberty at California State Prison Sacramento. I am authorized to file this petition for writ of habeas corpus on Mr. Powell's behalf, and verify that the contents are true and correct.

  
Briana Cravanas (SBN 353930)