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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEAN C. DRAKE,

Petitioner,

No. CIV S-07-0577 DFL KJM P

vs.

FELKER, et al.,

Respondents.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

In his petition, petitioner challenges prison disciplinary proceedings which resulted in a change in petitioner’s conditions of confinement. This is not a valid habeas challenge. A petition for writ of habeas corpus can be entertained by this court only if petitioner alleges he is actually in custody in violation of his Constitutional rights. 28 U.S.C. § 2254(a).

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1 Petitioner makes no such allegation here. Therefore, the court will recommend that this action
2 be dismissed.¹

3 In accordance with the above, IT IS HEREBY ORDERED that petitioner's
4 application to proceed in forma pauperis is granted; and

5 IT IS HEREBY RECOMMENDED that petitioner's petition for writ of habeas
6 corpus be dismissed.

7 These findings and recommendations will be submitted to the United States
8 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
9 twenty days after being served with these findings and recommendations, petitioner may file
10 written objections with the court. The document should be captioned "Objections to Findings
11 and Recommendations." Petitioner is advised that failure to file objections within the specified
12 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
13 (9th Cir. 1991).

14 DATED: April 5, 2007.

15 
16 U.S. MAGISTRATE JUDGE

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25 ¹ It appears petitioner might be able to bring an action under 42 U.S.C. § 1983. Before
26 deciding whether to file a § 1983 action, petitioner should review Sandin v. Connor, 515 U.S. 472
(1995). Also, petitioner is advised that if he files a § 1983 action he will be required to pay the \$350
filing fee at least on an installment basis.