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

ALEX ROSS,

Petitioner,

No. CIV-S-11-2551 CKD P

vs.

R. HILL,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 along with a request to proceed in forma pauperis. Examination of petitioner’s 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).

Under Rule 4 of the Rules Governing § 2254 Cases, the court must conduct a preliminary review of § 2254 habeas petitions and dismiss any petition where it plainly appears that petitioner is not entitled to relief in this court.

Petitioner challenges orders of restitution and fines which were imposed along with his sentence of imprisonment. The court may entertain a petition for writ of habeas corpus by a state prisoner only on the ground that the prisoner is in custody in violation of federal law.

1 28 U.S.C. § 2254(a). Because petitioner’s challenge to an order of restitution and fines does not
2 amount to a challenge to custody, his challenge may not be brought in a § 2254 action. Bailey v.
3 Hill, 599 F.3d 976, 980-82 (9th Cir. 2010). Therefore, the court will recommend that this action
4 be dismissed.

5 In accordance with the above, IT IS HEREBY ORDERED that:

- 6 1. Petitioner’s request for leave to proceed in forma pauperis is granted; and
- 7 2. The Clerk of the Court assign a district court judge to this case.

8 IT IS HEREBY RECOMMENDED that:

- 9 1. Petitioner’s application for writ of habeas corpus be dismissed; and
- 10 2. This case be closed.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
13 one days after being served with these findings and recommendations, petitioner may file
14 objections. Such a document should be captioned “Objections to Magistrate Judge’s Findings
15 and Recommendations.” In his objections petitioner may address whether a certificate of
16 appealability should issue in the event he files an appeal of the judgment in this case. See Rule
17 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a
18 certificate of appealability when it enters a final order adverse to the applicant). Petitioner is
19 advised that failure to file objections within the specified time may waive the right to appeal the
20 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: September 30, 2011

22 
23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE