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

LEE' THIEL PAYNE,

Petitioner,

No. 2:12-cv-2086 WBS EFB P

vs.

FOLSOM STATE PRISON,

Respondent.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a state prisoner proceeding without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner seeks leave to proceed *in forma pauperis*. He makes the required showing. Therefore, the request is granted. *See* 28 U.S.C. § 1915(a).

Currently pending before the court is petitioner’s application for a writ of habeas corpus. For the reasons explained below, the court finds that it must be dismissed without leave to amend. *See* Rule 4, Rules Governing § 2254 Cases.

A district court must entertain a habeas petition “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A judge entertaining a habeas petition “shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the

1 application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. The
2 petition must be dismissed if on initial review the court finds that “it plainly appears from the
3 petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”
4 Rule 4, Rules Governing § 2254 Cases. An application for federal habeas relief must specify all
5 grounds for relief, state facts supporting each ground and state the relief requested. Rule 2,
6 Rules Governing § 2254 Cases. While under Ninth Circuit precedent, this court must liberally
7 construe the allegations of a prisoner proceeding without counsel, *see Roy v. Lampert*, 465 F.3d
8 964, 970 (9th Cir. 2006), the court cannot grant relief based on conclusory allegations not
9 supported by any specific facts, *Jones v. Gomez*, 66 F.3d 199, 204-05 (9th Cir. 1995); *James v.*
10 *Borg*, 24 F.3d 20, 26 (9th Cir. 1994).

11 In this case, the court lacks habeas jurisdiction because petitioner only challenges a
12 condition of his confinement. Specifically, petitioner contends that prison officials have
13 impermissibly placed holds on his trust account for several years, which has prevented him from
14 making purchases at the prison canteen. Dckt. No. 1 at 3-4. Even if petitioner were to succeed
15 on this claim, such a result would not shorten his sentence. Accordingly, this court lacks habeas
16 jurisdiction over the claim raised in the petition. *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir.
17 2003) (“[H]abeas jurisdiction is absent . . . where a successful challenge to a prison condition
18 will not necessarily shorten the prisoner’s sentence.”). As it is clear that petitioner cannot allege
19 that the challenged condition of confinement affects the duration of his imprisonment, the
20 petition will be dismissed without leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1128 (9th
21 Cir. 2000) (stating that an indigent prisoner proceeding without counsel must be given leave to
22 file amended complaint unless the court can rule out any possibility that the plaintiff could state
23 a claim). This order is without prejudice to petitioner filing a civil rights action challenging the
24 alleged holds placed on his prison trust account.

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1 Accordingly, it is ORDERED that petitioner’s request for leave to proceed *in forma*
2 *pauperis* is granted.

3 Further, it is RECOMMENDED that the petition be dismissed without leave to amend,
4 and the Clerk be directed to close the case.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
10 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).
12 In his objections petitioner may address whether a certificate of appealability should issue in the
13 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
14 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it
15 enters a final order adverse to the applicant).

16 Dated: December 20, 2012.

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18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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