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

HAKIM ALI-AKBAR, aka
FREDERICK JONES,

Petitioner,

No. 2:12-cv-2414 JAM KJN P

vs.

GREG BRACKET,

ORDER AND

Respondent.

FINDINGS & RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding without counsel, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 26, 2012, the court ordered petitioner to file a properly completed in forma pauperis affidavit or pay the required filing fee. On November 1, 2012, petitioner filed a completed request to proceed in forma pauperis, and certified trust account statement.

Examination of the affidavit reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

Rule 4 of the Rules Governing § 2254 Cases requires the court to make a preliminary review of each petition for writ of habeas corpus. A petition must be dismissed “[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief.”

1 Rule 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th
2 Cir. 1990). A federal court may only grant a petition for writ of habeas corpus if the petitioner
3 can show that “he is in custody in violation of the Constitution” 28 U.S.C. § 2254(a). A
4 petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 challenges the *fact or*
5 *duration* of a petitioner’s conviction. Habeas corpus is the exclusive remedy for a prisoner who
6 is challenging the fact or duration of his confinement and seeking immediate or speedier release.
7 Preiser v. Rodriguez, 411 U.S. 475, 488-90 (1973). By contrast, a civil rights action brought
8 pursuant to 42 U.S.C. § 1983, challenges the *conditions* of the prisoner’s confinement.

9 In the instant petition, petitioner does not challenge the fact of his conviction or
10 the duration of his sentence. Rather, petitioner challenges a state court order finding plaintiff to
11 be a vexatious litigant, thereby limiting plaintiff’s access to state court. This allegation does not
12 challenge the fact or duration of petitioner’s conviction. Therefore, petitioner’s claim is not
13 appropriately brought as a petition for writ of habeas corpus.

14 Therefore, IT IS HEREBY ORDERED that petitioner is granted leave to proceed
15 in forma pauperis; and

16 IT IS RECOMMENDED that the petition for writ of habeas corpus is be
17 dismissed because the petition does not allege grounds that would entitle petitioner to habeas
18 corpus relief.

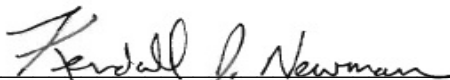
19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
21 days after being served with these findings and recommendations, petitioner may file written
22 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
23 Findings and Recommendations.” If petitioner files objections, he shall also address whether a
24 certificate of appealability should issue and, if so, why and as to which issues. A certificate of
25 appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial
26 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). Petitioner is advised

1 that failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: November 19, 2012

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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