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

ANDREW WALTERS,
Plaintiff,

No. 2:15-CV-0822-KJM-CMK-P

vs.

FINDINGS AND RECOMMENDATIONS

DAVID A. MASON, et al.,
Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8 Plaintiff claims that his criminal conviction is invalid because the trial court judge
9 lacked jurisdiction to impose sentence. When a state prisoner challenges the legality of his
10 custody and the relief he seeks is a determination that he is entitled to an earlier or immediate
11 release, such a challenge is not cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal
12 remedy is a petition for a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500
13 (1973); see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa
14 Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (per curiam). Thus, where a § 1983 action seeking
15 monetary damages or declaratory relief alleges constitutional violations which would necessarily
16 imply the invalidity of the prisoner's underlying conviction or sentence, or the result of a prison
17 disciplinary hearing resulting in imposition of a sanction affecting the overall length of
18 confinement, such a claim is not cognizable under § 1983 unless the conviction or sentence has
19 first been invalidated on appeal, by habeas petition, or through some similar proceeding. See
20 Heck v. Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 claim not cognizable
21 because allegations were akin to malicious prosecution action which includes as an element a
22 finding that the criminal proceeding was concluded in plaintiff's favor); Butterfield v. Bail, 120
23 F.3d 1023, 1024-25 (9th Cir. 1997) (concluding that § 1983 claim not cognizable because
24 allegations of procedural defects were an attempt to challenge substantive result in parole
25 hearing); cf. Neal, 131 F.3d at 824 (concluding that § 1983 claim was cognizable because
26 challenge was to conditions for parole eligibility and not to any particular parole determination);

1 cf. Wilkinson v. Dotson, 544 U.S. 74 (2005) (concluding that § 1983 action seeking changes in
2 procedures for determining when an inmate is eligible for parole consideration not barred
3 because changed procedures would hasten future parole consideration and not affect any earlier
4 parole determination under the prior procedures).

5 In this case, success on the merits of plaintiff's claims that the trial court lacked
6 jurisdiction to impose sentence necessarily implies the invalidity of the sentence. Plaintiff's
7 claim is, therefore, not cognizable and should be dismissed.

8 Because it does not appear possible that the deficiencies identified herein can be
9 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
10 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

11 Based on the foregoing, the undersigned recommends that this action be
12 dismissed.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. Responses to objections shall be filed within 14 days after service of
17 objections. Failure to file objections within the specified time may waive the right to appeal.
18 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 DATED: March 10, 2016

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22 **CRAIG M. KELLISON**
23 UNITED STATES MAGISTRATE JUDGE
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