

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY R.G. TURNER,  
Petitioner,  
v.  
JEFFREY A. BEARD,  
Respondent.

No. 2:15-cv-2237 CKD P

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).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court is required to conduct a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. The court must summarily dismiss a petition if it “plainly appears . . . that the petitioner is not entitled to relief. . .” The court has conducted the review required under Rule 4.

Petitioner challenges conditions of confinement. However, an application for writ of habeas corpus by a state prisoner can only be entertained by this court if the prisoner alleges he is in custody in violation of federal law. 28 U.S.C. § 2241(a). Because petitioner does not allege he

1 is in custody in violation of federal law, or challenge the length of his sentence, no writ of habeas  
2 corpus can issue. Accordingly, the court will recommend that this action be dismissed.<sup>1</sup>

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

- 4 1. Petitioner's motion to proceed in forma pauperis (ECF No. 2) is granted; and
- 5 2. The Clerk of the Court assign a district court judge to this case.

6 IT IS HEREBY RECOMMENDED that petitioner's application for writ of habeas corpus  
7 be summarily dismissed.

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

18 Dated: November 2, 2015

19   
20 \_\_\_\_\_  
21 CAROLYN K. DELANEY  
22 UNITED STATES MAGISTRATE JUDGE

23 1  
24 turn2237.114

25  
26 \_\_\_\_\_  
27 <sup>1</sup> If petitioner wishes to challenge conditions of confinement, he should initiate an action for  
28 violation of civil rights under 42 U.S.C. § 1983. Of course, as petitioner knows, he has "struck  
out" pursuant to 28 U.S.C. § 1915(g) so he will not be permitted to proceed in forma pauperis in a  
§ 1983 action unless he is "under imminent danger of serious physical injury."