**NOT FOR PUBLICATION**

FILED

MAR 14 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| DENNIS GORDON,<br><br>Petitioner-Appellant,<br><br>v.<br><br>JEFF PREMO, Superintendent,<br><br>Respondent-Appellee. | No. 17-36014<br><br>D.C. No.<br>6:16-cv-01018-SI<br><br>MEMORANDUM* |

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, Presiding

Submitted March 8, 2019**
Portland, Oregon

Before: GRABER and BERZON, Circuit Judges, and ROBRENO,*** District Judge.

Gordon, who pleaded guilty to rape and murder in 1976, appeals the district court's ruling that it lacked jurisdiction over his 28 U.S.C. § 2254 habeas corpus

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

petition. His petition alleged that the Oregon Board of Parole (the "Board") violated the Ex Post Facto Clause of the United States Constitution by increasing the interval between his parole hearings from two years to ten based on a 2009 amendment to Oregon Revised Statute § 144.228.

*Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016) (en banc), recognized that "habeas is the exclusive vehicle for claims brought by state prisoners that fall within the core of habeas," and held that "a § 1983 action is the exclusive vehicle for claims brought by state prisoners that are not within the core of habeas corpus." *Id.* at 927. It provided that "claims which would not necessarily lead to an earlier release" are not within the core of habeas. *Id.* at 928, 935; *see also Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) ("Because neither prisoner's claim would necessarily spell speedier release, neither lies at 'the core of habeas corpus.'" (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973))).

The relief requested by Gordon would merely switch him from a ten-year parole review cycle back to a two-year cycle. The Board could continue to exercise its discretion to deny Gordon parole regardless of this relief. Since the relief would not "necessarily lead to an earlier release," it is not "within the core of habeas" and this court lacks jurisdiction over his § 2254 petition. *Nettles*, 830 F.3d at 927-28, 935.

The proper avenue for Gordon's claim is 42 U.S.C. § 1983. The court in *Nettles* explained that even though a claim was "not cognizable in habeas," a court of appeals "must still consider whether the district court may construe [the] habeas petition as pleading a cause of action under § 1983." *Id.* at 935. It continued:

> If the complaint is amenable to conversion on its face, meaning that it names the correct defendants and seeks the correct relief, the court may recharacterize the petition so long as it warns the pro se litigant of the consequences of the conversion and provides an opportunity for the litigant to withdraw or amend his or her complaint.

*Id.* at 936 (quoting *Glaus v. Anderson*, 408 F.3d 382, 388 (7th Cir. 2005)). The court of appeals in *Nettles* then vacated the district court's opinion and remanded the case so that the district court could consider whether the petition was convertible. *Id.*

Unlike the petitioner in *Nettles*, Gordon is not pro se and does not require the heightened protections available to such a petitioner. *See, e.g.*, *Laws v. Lamarque*, 351 F.3d 919, 924 (9th Cir. 2003) ("We must construe pro se habeas filings liberally . . . ."). Moreover, his petition is not convertible on its face since, at a minimum, he has named the wrong defendants. Therefore, we will not remand the case, and, instead, we affirm the district court's denial of Gordon's § 2254 petition based on a lack of jurisdiction.

**AFFIRMED.**