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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM LEE BIRD,)	NO. CV 14-9475-VAP(E)
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION OF
)	
SHERIFF McDONALD,)	UNITED STATES MAGISTRATE JUDGE
)	
Respondent.)	
_____)	

This Report and Recommendation is submitted to the Honorable Virginia A. Phillips, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

INTRODUCTION

Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" on December 10, 2014. It plainly appears from the face of the Petition that Petitioner is not entitled to habeas relief. Therefore, the Court should deny and dismiss the

1 Petition without prejudice. See Rule 4 of the Rules Governing Section
2 2254 Cases in the United States District Courts.

3
4 **DISCUSSION**

5
6 Petitioner, a state prisoner currently serving his sentence in
7 the Los Angeles County Jail, seeks to challenge certain conditions of
8 his confinement, including alleged restrictions on his religious
9 practices and alleged restrictions on his access to legal materials.
10 The Petition does not challenge the legality of Petitioner's
11 conviction or the length of Petitioner's sentence.

12
13 A civil rights complaint, not a habeas corpus petition, is the
14 proper method of challenging the conditions of confinement. See Badaea
15 v. Cox, 931 F.2d 573, 574 (9th Cir. 1991); Crawford v. Bell, 599 F.2d
16 890, 891 (9th Cir. 1979). "[H]abeas jurisdiction is absent and a
17 [civil rights] action proper, where a successful challenge to a prison
18 condition will not necessarily shorten the prisoner's sentence."
19 Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003), cert. denied,
20 541 U.S. 1063 (2004); accord Badaea v. Cox, 931 F.2d at 574. Because
21 the present Petition does not challenge the legality of Petitioner's
22 conviction or the length of Petitioner's sentence, habeas jurisdiction
23 is absent. See id.

24
25 This Court should not exercise its discretion to convert the
26 present Petition into a civil rights complaint. There exist profound
27 procedural and substantive differences between habeas corpus actions
28 and civil rights actions pertinent to the circumstances herein. For

1 example, Sheriff McDonald, as Petitioner's custodian, would be an
2 appropriate respondent in a habeas corpus action. See Rule 2(a) of
3 the Rules Governing Section 2254 Cases in the United States District
4 Courts. Sheriff McDonald would not necessarily be an appropriate
5 defendant in a civil rights action, however. A defendant is not
6 liable on a civil rights claim absent the defendant's "personal
7 involvement" in the alleged constitutional deprivation or a "causal
8 connection" between the defendant's conduct and the alleged
9 constitutional deprivation. Hansen v. Black, 885 F.2d 642, 646 (9th
10 Cir. 1989); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978);
11 see Palmer v. Sanderson, 9 F.3d 1433, 1438 (9th Cir. 1993) (a
12 supervisory official may not be held liable in a civil rights action
13 under the doctrines of vicarious liability or respondeat superior).
14 Additionally, prisoners filing civil rights actions, unlike prisoners
15 filing habeas petitions, are liable for the full amount of the \$400.00
16 filing fee. 28 U.S.C. § 1915(b)(1); see Naddi v. Hill, 106 F.3d 275
17 (9th Cir. 1997) (in forma pauperis provisions of section 1915, as
18 amended by the Prison Litigation Reform Act of 1995, do not apply to
19 habeas actions). Thus, conversion of the present Petition into a
20 civil rights complaint would be inappropriate. See Glaus v. Anderson,
21 408 F.3d 382, 388 (7th Cir. 2005) (court relied on myriad differences
22 between habeas actions and civil rights actions in affirming district
23 court's refusal to recharacterize a habeas petition as a civil rights
24 complaint); Alford v. Doe, 2009 WL 3712823, at *1 (C.D. Cal. Oct. 30,
25 2009) (declining to convert mislabeled habeas petition into

26 ///
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1 civil rights action).¹

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3 **RECOMMENDATION**

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5 For all of the foregoing reasons, IT IS RECOMMENDED that the
6 Court issue an Order: (1) accepting and adopting this Report and
7 Recommendation; and (2) directing that Judgment be entered denying and
8 dismissing the Petition without prejudice.

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10 DATED: December 11, 2014.

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13 _____/s/_____
14 CHARLES F. EICK
15 UNITED STATES MAGISTRATE JUDGE
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25 _____
26 ¹ The Court also observes that Petitioner already has
27 pending in this Court a civil rights action in which he appears
28 to challenge some of the same alleged conditions of confinement
Petitioner seeks to challenge herein. See Bird v. (1) Sheriff
Jim McDonald, et al., No. CV 14-7205-VAP(E).

1 **NOTICE**

2 Reports and Recommendations are not appealable to the Court of
3 Appeals, but may be subject to the right of any party to file
4 objections as provided in the Local Rules Governing the Duties of
5 Magistrate Judges and review by the District Judge whose initials
6 appear in the docket number. No notice of appeal pursuant to the
7 Federal Rules of Appellate Procedure should be filed until entry of
8 the judgment of the District Court.

9 If the District Judge enters judgment adverse to Petitioner, the
10 District Judge will, at the same time, issue or deny a certificate of
11 appealability. Within twenty (20) days of the filing of this Report
12 and Recommendation, the parties may file written arguments regarding
13 whether a certificate of appealability should issue.

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