UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-08739-JVS (JDE)	**Date**	April 5, 2017
Title	ROBERT MIRANDA GOMEZ v. J. GATELO, Warden		

Present: The Honorable	John D. Early

Ivette Gomez	n/a
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Petitioner:	Attorneys Present for Respondent:
n/a	n/a

Proceedings: (In Chambers) ORDER REQUIRING FURTHER BRIEFING

On November 22, 2016, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Pet."), challenging a 2014 disciplinary proceeding. Petitioner is currently serving an indeterminate 15-years-to-life sentence for a 1992 conviction of murder.

On January 13, 2017, Respondent filed a Motion to Dismiss Petition for Writ of Habeas Corpus ("Motion") on the ground that the Petition is unexhausted. In response to the Motion, Petitioner filed an "Application to Place Matter Pending in Abeyance and/or Request for Continu[]ance" on February 16, 2017. On March 20, 2017, Petitioner also filed an Objection to the Motion.

Prior to resolving the issue of exhaustion raised in the Motion, as set forth further below, the Court will request further briefing by the Parties regarding whether Petitioner's claims are cognizable on federal habeas review.

A district court will entertain a habeas petition on "behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). "Federal law opens two main avenues to relief on complaints related to imprisonment: [A] petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act . . . 42 U.S.C. § 1983. Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus." Hill v. McDonough, 547 U.S. 573, 579 (2006) (quoting Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam)). "An inmate's challenge to the circumstances of his confinement, however, may be brought under § 1983." Id.; see also Preiser v. Rodriguez, 411 U.S. 475, 499 (1973) (civil rights action is the proper remedy for a state prisoner challenging conditions of prison life, but not the fact or length of his custody). Thus, "habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003); see also Skinner v. Switzer, 562 U.S. 521, 525 (2011) ("Where the prisoner's claim would not 'necessarily spell speedier release,' however, suit may be brought under § 1983." (quoting Wilkinson v. Dotson, 544

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U.S. 74, 82 (2005))); Preiser, 411 U.S. at 500 (When a prisoner's claim challenges "the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.").

The Ninth Circuit recently addressed whether a state prisoner challenging a disciplinary violation stated a cognizable claim on federal habeas review in Nettles v. Grounds, 830 F.3d 922, 924-25 (9th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 645 (2017). In Nettles, a prisoner serving a life sentence was found guilty of a disciplinary violation and lost 30 days of post-conviction credits. The prisoner filed a habeas petition seeking restoration of the loss of good time credits and expungement of the disciplinary violation. The district court dismissed the petition, holding that the prisoner could not prove that expungement of the disciplinary violation was likely to accelerate his eligibility for parole. Id. at 927.

On rehearing en banc, the Ninth Circuit held that the district court lacked jurisdiction over the prisoner's claims since success on his claims "would not necessarily lead to immediate or speedier release because the expungement of the challenged disciplinary violation would not necessarily lead to a grant of parole." Nettles, 830 F.3d at 934-35. The Ninth Circuit explained that claims which do not fall within the "core of habeas corpus," must be pursued, if at all, in an action pursuant to 42 U.S.C. § 1983. Id. at 931. Because success on the prisoner's claims in Nettles would not necessarily lead to immediate or earlier release from confinement, his claims did not fall within "the core of habeas corpus," and as such, he was required to bring his claims under § 1983. Id. at 935; see also Ramirez, 334 F.3d at 852 (explaining that a prisoner may "challenge the conditions of his confinement under § 1983 because his claim, if successful, would not necessarily invalidate a disciplinary action that affects the fact or length of his confinement.").

Here, as a result of the disciplinary violation, Petitioner was assessed 30 days forfeiture of credit, among other penalties. (Pet., Exhibit B.) However, as explained, Petitioner is serving an indeterminate life sentence. (Id. at 2.) As such, even if the Court were to grant relief on Petitioner's claims such that Petitioner's lost credit was restored and Petitioner's disciplinary violation was expunged and/or he was granted a new hearing on the rules violation report ("RVR"), this would not *necessarily* result in an immediate or speedier release. Moreover, the mere possibility that the disciplinary violation could adversely affect Petitioner's chances of parole in the future is too speculative to serve as the basis for a habeas corpus petition. See Spencer v. Kemna, 523 U.S. 1, 13-14 (1998); see also Nettles, 830 F.3d at 934-35. In his March 20, 2017 Objection, Petitioner maintains that the RVR was the sole reason he was denied parole in 2015. (Objection at D3.)[1] While the Board of Parole Hearings is likely to consider a rules violation report in making its

[1] Although Petitioner purports to attach the 2015 and 2016 decisions denying parole, no such documents have been attached. At the time Petitioner files his response to this Order, Petitioner should include any documents that he maintains supports his contention that the RVR was the sole reason he was denied parole.

decision to grant or deny parole, Nettles itself found that, "[b]ecause the parole board has the authority to deny parole 'on the basis of any of the grounds presently available to it,' the presence of a disciplinary infraction does not compel the denial of parole, nor does an absence of an infraction compel the grant of parole." Nettles, 830 F.3d at 935 (internal citation omitted). Thus, the panel could "deny parole to [petitioner] even if he succeeded in expunging the [2014] rules violation report." Id. Under Nettles, then, because success on Petitioner's claims would not necessarily lead to an immediate or earlier release date, it appears that his claims do not fall within "the core of habeas corpus," and as such, it appears that Petitioner must instead bring his claims in a § 1983 action. Id.

Additionally, although the Ninth Circuit in Nettles stated that a district court may construe a habeas petition to plead a civil rights claim after notifying the prisoner and obtaining his informed consent, 830 F.3d at 935-36, converting the instant action into a federal civil rights action does not appear appropriate in this case. First, prisoner civil rights actions are subject to different requirements (and higher filing fees) than are federal habeas proceedings. Second, the petition must be amenable to conversion "on its face," that is, it must name the correct defendants and seek the correct relief. See Nettles, 830 F.3d at 936. Respondent J. Gastelo ("Gastelo"), the warden of the California Men's Colony, would not be the appropriate defendant in a civil rights action since Petitioner's claims do not address Gastelo's conduct.

Accordingly, the Court ORDERS further briefing regarding whether the Court has jurisdiction to entertain this Petition. **Petitioner is ORDERED** to respond to this Order on or before **May 5, 2017**, explaining why this action should not be dismissed in accordance with Rule 4 of the Rules Governing Section 2254 Cases in the United States District Court for lack of jurisdiction. Respondent shall file a response within **twenty (20)** days of the date Petitioner files his supplemental brief. Petitioner may file a reply within **twenty (20)** days of the date the response is filed.

The Court warns Petitioner that failure to timely file a response to this Order may result in the Court dismissing this action with prejudice for lack of jurisdiction and for failure to prosecute and comply with Court orders. See Fed. R. Civ. P. 41(b).

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