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

TROY ELLIOT WASHINGTON,)
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 Petitioner,)
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 v.)
)
 NEIL MCDOWELL,)
)
 Respondent.)
 _____)

Case No. CV 17-688-CJC (AJW)

**MEMORANDUM AND ORDER
DISMISSING PETITION
WITHOUT PREJUDICE**

Petitioner is currently in custody serving a seven year prison sentence imposed on February 19, 2014. [Petition at 2]. He filed this petition for a writ of habeas corpus on April 7, 2017. The petition does not purport to challenge petitioner’s 2014 conviction or sentence. Rather, it seeks to overturn a 2005 disciplinary ruling finding petitioner guilty of distribution of a controlled substance. [Memorandum in Support of Petition at 2; Petitioner’s Exhibit (“Ex.”) F]. As a result of that disciplinary finding, the California Department of Corrections and Rehabilitation has precluded petitioner from participating in family visits.¹

The petition alleges that (a) there was insufficient evidence to support the finding that petitioner

¹ Family visits are extended overnight visits allowed eligible inmates and their immediate family members. See 15 Cal. Code Regs. § 3177. Family visits are a privilege and are not available to inmates who, at any time, have been found guilty of a rules violation for narcotics distribution while incarcerated. See 15 Cal. Code Regs. §§ 3177(b)(1)B), (b)(2).

1 distributed a controlled substance and (b) the California Court of Appeal and the California Supreme
2 court deprived petitioner of due process by issuing one-line denials of his habeas corpus petitions.
3 [Memorandum in Support of Petition at 4-6].²

4 Respondent filed a motion to dismiss the petition, arguing that it failed to state a cognizable claim
5 for relief, and petitioner filed an opposition. For the following reasons, respondent’s motion is granted.

6 Habeas corpus “is the exclusive remedy ... for the prisoner who seeks ‘immediate or speedier
7 release’ from confinement.” Skinner v. Switzer, 562 U.S. 521, 525 (2011) (citation omitted); see
8 Wilkinson v. Dotson, 544 U.S. 74, 78-82 (2005) (stating that a petition for a writ of habeas corpus is the
9 appropriate vehicle for challenges to the fact or duration of custody); Preiser v. Rodriguez, 411 U.S. 475,
10 487-489 (1973) (explaining that challenges to confinement that would, if successful, result in immediate
11 or speedier release fall within the “core” of habeas corpus). When success on a prisoner’s claims “would
12 not necessarily lead to his immediate or earlier release from confinement,” they do not fall within the
13 “core of habeas corpus,” and such claims must be raised in a civil rights action. See Nettles v. Grounds,
14 830 F.3d 922, 927-931, 935 (9th Cir. 2016) (en banc), cert. denied, 137 S.Ct. 645 (2017).

15 Petitioner’s challenge to the disciplinary finding, if successful, would have no effect on the
16 validity or duration of his confinement. Although petitioner was assessed a loss of 180 days of sentence
17 credits [see Petitioner’s Ex. F], that assessment was applied to the sentence that petitioner was serving
18 in 2005. Petitioner is no longer serving that sentence; he is currently serving an entirely different
19 sentence imposed nearly ten years later. Consequently, the loss of sentence credits has no effect on the
20 duration of his current sentence. See Nettles, 830 F.3d at 935 (holding that the prisoner’s challenge to
21 the validity of a disciplinary hearing was not cognizable on federal habeas corpus review notwithstanding
22 the alleged impact of the disciplinary finding on the prisoner’s potential future eligibility for parole);
23 Ramirez v. Galaza, 334 F.3d 850, 855, 859 (9th Cir. 2003) (“[H]abeas jurisdiction is absent ... where a
24 successful challenge to a prison condition will not necessarily shorten the prisoner’s sentence.”), cert.
25 denied, 541 U.S. 1063 (2004); Crane v. Beard, 2017 WL 1234096, at *4 (C.D. Cal. Apr. 3, 2017)

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27 ² The petition includes what purports to be a separate ground for relief alleging that petitioner is
28 entitled to equitable tolling of the statute of limitation. [Memorandum in Support of Petition at 4-5]. This
“claim,” however, consists only of an argument that the petition is timely under the AEDPA.

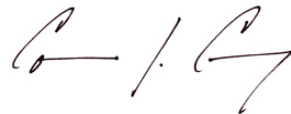
1 (dismissing prisoner's challenge to a disciplinary finding because it was not cognizable on federal habeas
2 corpus review). Although the disciplinary finding has the continuing effect of precluding petitioner from
3 participating in family visits, this affects only the conditions of petitioner's confinement.

4 Likewise, petitioner's complaint about the manner in which the state courts denied his habeas
5 corpus petitions does not present a cognizable claim for habeas relief. Gerlaugh v. Stewart, 129 F.3d
6 1027, 1045 (9th Cir. 1997) (stating that allegations of error during a state habeas proceeding are attacks
7 on a proceeding collateral to the one that resulted in petitioner's custody, and therefore do not provide
8 a basis for federal habeas corpus relief), cert. denied, 525 U.S. 903 (1998); Caufield v. Solis, 2010 WL
9 5943220, *12 (C.D.Cal. Nov. 22, 2010) (same), report and recommendation adopted, 2011 WL 841260
10 (C.D.Cal. Mar. 2, 2011).

11 Although petitioner's claims may be cognizable in a civil rights action, they are not cognizable
12 in a petition for a writ of habeas corpus. Therefore, respondent's motion is granted, and the petition is
13 dismissed without prejudice to petitioner's ability to attempt to pursue his claims in a civil rights action
14 pursuant to 42 U.S.C. §1983.³

15 **It is so ordered.**

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17 Dated: July 25, 2017



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19 _____
Cormac J. Carney
United States District Judge

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28 ³ Although this Court may, after obtaining informed consent from a prisoner, recharacterize a
misabeled habeas corpus petition as a civil rights action, see Nettles, 830 F.3d at 935-936, the Court declines
to do so in this case. Furthermore, the Court expresses no opinion as to the viability of such an action.

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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TROY ELLIOT WASHINGTON,

Petitioner,

v.

NEIL MCDOWELL,

Respondent.

Case No. CV 17-688-CJC(AJW)

JUDGMENT

It is hereby adjudged that the petition for a writ of habeas corpus is dismissed without prejudice.

Dated: _____

Cormac J. Carney
United States District Judge