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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRYAN E. RANSOM,)	1:05-CV-1379 AWI LJO HC
)	
Petitioner,)	
)	FINDINGS AND RECOMMENDATION
v.)	REGARDING PETITION FOR WRIT OF
)	HABEAS CORPUS
)	
A. K. SCRIBNER, Warden,)	[Doc. #1]
)	
Respondent.)	

On November 1, 2005, Petitioner filed a petition for writ of habeas corpus in this Court.

DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of that confinement.

1 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
2 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

3 In this case, Petitioner raises two claims. First, Petitioner claims he is being detained in the
4 Secured Housing Unit (“SHU”) in violation of his due process rights. Second, Petitioner claims his
5 continued incarceration in the California Department of Corrections (“CDC”) is in violation of his
6 due process rights. Petitioner’s first claim for relief is cognizable in a federal habeas action only to
7 the extent that Petitioner challenges his ability to earn good time credits toward a reduction in his
8 sentence. Petitioner’s second claim for relief is not cognizable since Petitioner challenges the
9 conditions of his confinement, not the fact or duration of that confinement. Thus, Petitioner is not
10 entitled to habeas corpus relief with respect to his second claim, and it must be dismissed. Should
11 Petitioner wish to pursue the claim, he must do so by way of a civil rights complaint pursuant to 42
12 U.S.C. § 1983.

13 **RECOMMENDATION**

14 Accordingly, the Court RECOMMENDS that Ground Two of the petition for writ of habeas
15 corpus be DISMISSED for failure to present a cognizable habeas claim.

16 This Findings and Recommendation is submitted to the Honorable Anthony W. Ishii, United
17 States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304
18 of the Local Rules of Practice for the United States District Court, Eastern District of California.
19 Within thirty (30) days after being served with a copy, any party may file written objections with the
20 court and serve a copy on all parties. Such a document should be captioned “Objections to
21 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
22 filed within ten (10) court days (plus three days if served by mail) after service of the objections.
23 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The
24 parties are advised that failure to file objections within the specified time may waive the right to
25 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: February 15, 2006**
28 b9ed48

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE