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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOSEPH DEMETRIUS LYLES,

1:07-cv-01155-LJO-SMS (HC)

Petitioner,

FINDINGS AND RECOMMENDATION  
RECOMMENDING DISMISSAL OF CERTAIN  
CLAIMS

v.

[Doc. 1]

KEN CLARK, Warden

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on August 6, 2007. In the instant petition, Petitioner raises the following claims (1) denial of legal access resulted in rules violation report; (2) the library was aware of pending legal deadline and was slow in issuing docket; (3) limited access to the law library; and (4) the disciplinary action has delayed his parole date.

A. Procedural Grounds for Summary Dismissal

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to

1 dismiss, or after an answer to the petition has been filed. A petition for habeas corpus should not  
2 be dismissed without leave to amend unless it appears that no tenable claim for relief can be  
3 pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

4 B. Failure to State Cognizable Federal Habeas Claim

5 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary  
6 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it  
7 plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the  
8 Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A  
9 federal court may only grant a petition for writ of habeas corpus if the petitioner can show that  
10 "he is in custody in violation of the Constitution . . ." 28 U.S.C. § 2254(a). A habeas corpus  
11 petition is the correct method for a prisoner to challenge the "legality or duration" of his  
12 confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez,  
13 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section  
14 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method  
15 for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500 U.S.  
16 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee  
17 Notes to Rule 1 of the Rules Governing Section 2254 Cases.

18 Only Ground Four of the instant petition is arguably cognizable pursuant to § 2254.  
19 Grounds One, Two, and Three challenge the conditions of Petitioner's confinement, not the fact  
20 or duration of that confinement. Thus, he is not entitled to habeas corpus relief on these grounds  
21 and they must be dismissed. Should Petitioner wish to pursue these claims, he must do so by  
22 way of a civil rights complaint pursuant to 42 U.S.C. § 1983.

23 RECOMMENDATION

24 Based on the foregoing, it is HEREBY RECOMMENDED that Grounds One, Two, and  
25 Three of the instant petition be DISMISSED for failure to state a cognizable claim.

26 This Findings and Recommendation is submitted to the assigned United States District  
27 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of  
28 the Local Rules of Practice for the United States District Court, Eastern District of California.

1 Within thirty (30) days after being served with a copy, any party may file written objections with  
2 the court and serve a copy on all parties. Such a document should be captioned “Objections to  
3 Magistrate Judge’s Findings and Recommendations.” Replies to the objections shall be served  
4 and filed within ten (10) court days (plus three days if served by mail) after service of the  
5 objections. The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. §  
6 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time  
7 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th  
8 Cir. 1991).

9 IT IS SO ORDERED.

10 **Dated:** August 16, 2007

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE