

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDDIE C. SPENCE,	)	1:08-cv-00045-AWI-SKO-HC
	)	
Petitioner,	)	ORDER GRANTING PETITIONER'S
	)	REQUEST FOR AN EXTENSION OF TIME
v.	)	TO FILE OBJECTIONS TO FINDINGS
	)	AND RECOMMENDATIONS (DOCS. 60,
	)	55)
PEOPLE OF THE STATE OF	)	
CALIFORNIA,	)	<b>DEADLINE FOR FILING OBJECTIONS TO</b>
	)	<b>FINDINGS AND RECOMMENDATIONS TO</b>
Respondent.	)	<b>DENY THE PETITION:</b>
	)	<b>THIRTY (30) DAYS AFTER SERVICE OF</b>
	)	<b>THIS ORDER</b>

FINDINGS AND RECOMMENDATIONS TO DENY PETITIONER'S REQUEST FOR INJUNCTIVE RELIEF (DOC. 60)

**DEADLINE FOR FILING OBJECTIONS TO FINDINGS AND RECOMMENDATIONS TO DENY PETITIONER'S MOTION FOR INJUNCTIVE RELIEF: THIRTY (30) DAYS AFTER SERVICE OF THIS ORDER**

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 303. Pending before the Court are 1) Petitioner's motion for an extension of time to

1 file objections to findings and recommendations to deny the  
2 petition which were filed on March 28, 2011; and 2) Petitioner's  
3 motion for injunctive relief in the form of an order compelling  
4 the Respondent to return Petitioner's property. The motions were  
5 filed on July 1, 2011.

6 I. Order Granting the Request for an Extension of Time

7 On March 28, 2011, the Magistrate Judge filed findings and  
8 recommendations to deny the petition for writ of habeas corpus on  
9 the merits. The claims included vindictive prosecution,  
10 violation of the right to a speedy trial, and the sufficiency of  
11 the evidence to establish that the victim experienced sustained  
12 fear and that the threat was unconditional under the  
13 circumstances. The findings and recommendations were served by  
14 mail on Petitioner on the same date and informed Petitioner that  
15 objections were due within thirty days.

16 In April 2011, Petitioner was granted thirty additional days  
17 to file objections because of serious illness with  
18 hospitalization that commenced in December 2010 and resulted in  
19 Petitioner's return to custody to be housed in the prison  
20 infirmary on March 25, 2011. In March, Petitioner was learning  
21 to walk; in April, he requested the return of his property but  
22 did not receive it.

23 On June 2, 2011, Petitioner was again granted an additional  
24 thirty days to file objections because he was released from the  
25 prison infirmary on or about May 24, 2011, and was awaiting  
26 placement back in the general population in order to be eligible  
27 for access to the law library. Petitioner had not received his  
28 property despite numerous requests.

1 On July 1, 2011, Petitioner filed his third request for an  
2 extension of time to file objections to the findings and  
3 recommendations concerning the merits of his petition.  
4 Petitioner stated that he had been served with a copy of the  
5 findings and recommendations. Petitioner stated that he had  
6 sought the return of his "legal matter" so that he could file  
7 objections, and he filed numerous inmate appeals after he did not  
8 receive his property. Petitioner asserts that without the  
9 property, he cannot respond to the moving pleadings.

10 The Court notes that it is not pleadings to which Petitioner  
11 seeks to respond, but rather the Magistrate Judge's findings and  
12 recommendations to deny the petition. The Respondent filed an  
13 answer to the petition, and Petitioner filed a traverse. Thus,  
14 the issues were fully briefed before the Magistrate Judge  
15 prepared findings and recommendations. Therefore, Petitioner is  
16 not faced with preparing his case before this Court in the first  
17 instance. Instead, he has an opportunity to provide final input  
18 with respect to the recommended disposition in his case.

19 Petitioner has not shown how his property is necessary for  
20 filing objections to the findings and recommendations.  
21 Petitioner offers only a conclusion that without "said property  
22 petitioner can in no way respond" to the moving pleadings. (Mot.  
23 2.) It does not appear that Petitioner is suffering any  
24 limitation of access to the law library or other condition of  
25 confinement that would prevent filing objections.

26 Therefore, it does not appear that Petitioner's lack of  
27 access to his property is good cause for an extension of time.  
28 However, because of Petitioner's history of illness, the Court

1 will grant to Petitioner one final extension of time to file  
2 objections to the findings and recommendations. Petitioner is  
3 forewarned that the Court will not grant further extensions  
4 without an affirmative showing of good cause based on specific  
5 facts.

6 Accordingly, it is ORDERED that Petitioner's motion for an  
7 extension of time is GRANTED, and Petitioner may file objections  
8 to the findings and recommendations to deny the petition no later  
9 than thirty (30) days after the date of service of this order.

10 II. Findings and Recommendations Regarding Petitioner's  
11 Request for Injunctive Relief

12 Petitioner requests that the Court compel the warden and  
13 custodial staff to return his property.

14 After reading the motion in its entirety, the Court  
15 concludes that it is clear that Petitioner is challenging the  
16 conditions of his confinement, not the fact or duration of that  
17 confinement.

18 It is established that relief by way of a writ of habeas  
19 corpus pursuant to 28 U.S.C. § 2241 extends to a prisoner who  
20 shows that the custody violates the Constitution, laws, or  
21 treaties of the United States. 28 U.S.C. § 2241(c)(3).

22 A habeas corpus petition is the correct method for a  
23 prisoner to challenge the legality or duration of his  
24 confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991)  
25 (quoting Preiser v. Rodriguez, 411 U.S. 475, 485 (1973));  
26 Advisory Committee Note to Rule 1 of the Rules Governing Section  
27 2254 Cases (Habeas Rules), 1976 Adoption. In contrast, a civil  
28 rights action pursuant to 42 U.S.C. § 1983 is the proper method

1 for a prisoner to challenge the conditions of that confinement.  
2 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411  
3 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee Note to  
4 Habeas Rule 1, 1976 adoption.

5 In the motion for injunctive relief, Petitioner seeks to  
6 challenge the conditions of his confinement and not the legality  
7 or duration of his confinement. Accordingly, Petitioner's claim  
8 concerning his property is cognizable in a civil rights action  
9 rather than a petition for writ of habeas corpus. The Court  
10 will, therefore, recommend that the motion for injunctive relief  
11 be denied.

12 III. Recommendations

13 In accordance with the foregoing, it is RECOMMENDED that  
14 Petitioner's request for injunctive relief be DENIED.

15 These findings and recommendations are submitted to the  
16 United States District Court Judge assigned to the case, pursuant  
17 to the provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of  
18 the Local Rules of Practice for the United States District Court,  
19 Eastern District of California. Within thirty (30) days after  
20 being served with a copy, any party may file written objections  
21 with the Court and serve a copy on all parties. Such a document  
22 should be captioned "Objections to Magistrate Judge's Findings  
23 and Recommendations." Replies to the objections shall be served  
24 and filed within fourteen (14) days (plus three (3) days if  
25 served by mail) after service of the objections. The Court will  
26 then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §  
27 636 (b) (1) (C). The parties are advised that failure to file  
28 objections within the specified time may waive the right to

1 appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
2 1153 (9th Cir. 1991).

3

4 IT IS SO ORDERED.

5 **Dated: July 14, 2011**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28