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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 GEORGE WESLEY WELLS,) 1:08-CV-01818 SMS HC
13 Petitioner,) ORDER DISMISSING CLAIM
14)
15 v.)
16)
17 JAMES D. HARTLEY, Warden,)
18 Respondent.)
_____)

19
20 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
21 pursuant to 28 U.S.C. § 2254. This action has been referred to this Court pursuant to 28
22 U.S.C. § 636(b)(1) and Local Rule 72-302. Petitioner has returned his consent/decline form
23 indicating consent to the jurisdiction of the Magistrate Judge.

24 On November 26, 2008, Petitioner filed the instant petition for writ of habeas corpus in this
25 Court. He is currently serving a sentence of 18 years to life as a result of a conviction for second
26 degree murder out of the Los Angeles County Superior Court. He challenges an August 30, 2007,
27 decision of the California Board of Parole Hearings in which he was denied parole.
28

1 **DISCUSSION**

2 A. Procedural Grounds for Summary Dismissal

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

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

7 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
8 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
9 dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th
10 Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it
11 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson,
12 440 F.2d 13, 14 (9th Cir. 1971).

12 B. Improper Claim

13 The instant petition concerns a subsequent parole hearing held on August 30, 2007, before
14 the California Board of Parole Hearings in which Petitioner was denied parole. Petitioner raises
15 multiple claims in his petition, of which all except one contest the parole decision. In claim three (or
16 "V.," depending on which part of the petition is reviewed), Petitioner challenges the underlying
17 conviction by claiming a violation of his plea agreement. This claim is not properly before this
18 Court. First, the balance of the instant petition raises challenges to the parole decision, not the
19 underlying conviction. Thus, the claim must be brought separately. Second, the proper place to raise
20 such a claim is in the district of conviction, which is the Central District of California since
21 Petitioner was convicted in the Los Angeles County Superior Court. Therefore, the claim will be
22 dismissed.

23 **ORDER**

24 Accordingly, IT IS HEREBY ORDERED that Claim Three (or "V.," as noted elsewhere in
25 the petition) is DISMISSED from the petition.

26 IT IS SO ORDERED.

27 **Dated: January 4, 2009**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE