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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CURLEY JOHN BROUSSARD, JR.,)	1:08-CV-01926 GSA HC
Petitioner,)	ORDER DISMISSING PETITION FOR WRIT
v.)	OF HABEAS CORPUS
LEE ANN CHRONES, et al.,)	ORDER DIRECTING CLERK OF COURT
Respondent.)	TO ENTER JUDGMENT AND TERMINATE
)	CASE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 9, 2009, Petitioner returned the consent/decline form and indicated consent to the jurisdiction of the Magistrate Judge.

On January 9, 2009, Petitioner filed the instant first amended petition for writ of habeas corpus. He is currently serving a sentence of 17 years to life for a second degree murder conviction out of Los Angeles County Superior Court.

DISCUSSION

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

1 entitled to relief in the district court, the judge must dismiss the petition and direct the clerk
2 to notify the petitioner.

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

9 B. Failure to State a Cognizable Federal Claim

10 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241 of
11 Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner unless
12 he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states:

13 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall
14 entertain an application for a writ of habeas corpus in behalf of a person in
15 custody pursuant to a judgment of a State court *only on the ground that he is in
16 custody in violation of the Constitution or laws or treaties of the United States.*

17 (emphasis added). See also, Rule 1 to the Rules Governing Section 2254 Cases in the United States
18 District Court. The Supreme Court has held that "the essence of habeas corpus is an attack by a
19 person in custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411 U.S. 475, 484
20 (1973).

21 Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must
22 demonstrate that the adjudication of his claim in state court

23 resulted in a decision that was contrary to, or involved an unreasonable application
24 of, clearly established Federal law, as determined by the Supreme Court of the
25 United States; or resulted in a decision that was based on an unreasonable
26 determination of the facts in light of the evidence presented in the State court
27 proceeding.

28 28 U.S.C. § 2254(d)(1),(2).

In the instant case, Petitioner fails to state a cognizable federal claim. He makes numerous
broad allegations against the California Department of Corrections and Rehabilitation, the California
Board of Prison Terms and the California Correctional Peace Officer Association. These broad
allegations include claims of "deliberate indifference," "false imprisonment," "conspiracy," "conflict

1 of interest,” fabrication of reports, manipulation of medical records, stealing of property, and
2 provocation of violence. Petitioner merely states his contentions with no additional description or
3 supporting facts. His claims are completely conclusory. "Conclusory allegations which are not
4 supported by a statement of specific facts do not warrant habeas relief." James v. Borg, 24 F.3d 20,
5 29 (9th Cir.1994); Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir.1995) (holding that conclusory
6 allegations made with no reference to the record or any document do not merit habeas relief); Allard
7 v. Nelson, 423 F.2d 1216, 1217 (9th Cir.1970) (Conclusory allegations in a habeas petition fail to
8 state a claim and do not suffice to shift the burden to the state to answer an order to show cause.);
9 Campbell v. Wood 18 F.3d 662, 679 (9th Cir.1994), *citing* Boehme v. Maxwell, 423 F.2d 1056,
10 1058 (9th Cir.1970) ("An evidentiary hearing is not required on allegations that are "conclusory and
11 wholly devoid of specifics."). In addition, none of these claims, even if supported, would suffice to
12 present a cognizable federal claim. These claims involve the conditions of his confinement; they do
13 not challenge the legality of his custody. Therefore, they must be presented in a civil rights action,
14 not a habeas action.

15 Rule 4 of the Rules Governing Section 2254 Cases explicitly allows the district court to
16 dismiss summarily a habeas petition when no claim for relief is stated. See O'Bremski v. Maass,
17 915 F.2d 418, 420 (9th Cir.1990.) Petitioner has already been presented with an opportunity to
18 present a cognizable claim.

19 **ORDER**

20 Accordingly, IT IS HEREBY ORDERED:

- 21 1) The petition for writ of habeas corpus is DISMISSED with prejudice; and
22 2) The Clerk of Court is DIRECTED to enter judgment and terminate the case.

23 IT IS SO ORDERED.

24 **Dated: January 14, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE