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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHAULTON J. MITCHELL,

1:09-cv-00124-SMS (HC)

Petitioner,

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS FOR FAILURE TO
STATE COGNIZABLE CLAIM

v.

[Doc. 1]

HUGES, et.al.,

Respondents.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner consented to the jurisdiction of the United States Magistrate Judge. (Court Doc. 3.)

Petitioner filed the instant petition for writ of habeas corpus on January 21, 2009. (Court Doc. 1.) Petitioner contends that prison officials failed to protect him from being attacked.

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 face of 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

1 or duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,
2 Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the
3 Rules Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. §
4 1983 is the proper method for a prisoner to challenge the conditions of that confinement.
5 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
6 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

7 Here, Petitioner’s claim that prison officials failed to protect him from being attacked, is a
8 challenge to the conditions of his confinement, not the fact or duration of that confinement.
9 Thus, Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed.
10 Should Petitioner wish to pursue his claims, Petitioner must do so by way of a civil rights
11 complaint pursuant to 42 U.S.C. § 1983.

12 ORDER

13 Accordingly, it is HEREBY ORDERED that the instant petition for writ of habeas corpus
14 is DISMISSED.

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17 IT IS SO ORDERED.

18 **Dated:** February 10, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE