

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

9	REVEREND BECK,)	1:09-cv-00276-TAG HC
)	
10	Petitioner,)	ORDER DISMISSING PETITION FOR WRIT
)	OF HABEAS CORPUS (Doc. 1)
11	v.)	
)	ORDER DIRECTING CLERK OF COURT TO
12	DARREL G. ADAMS,)	TERMINATE THE ACTION
)	
13	Respondent.)	ORDER DIRECTING CLERK OF COURT TO
)	SENT PETITIONER A FORM COMPLAINT
14)	FOR CIVIL RIGHTS VIOLATION

Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 12, 2009, Petitioner filed his petition in this Court. (Doc. 1). Pursuant to 28 U.S.C. § 636(c), Petitioner consented to the jurisdiction of the United States Magistrate Judge. (Doc. 3).

Petitioner challenges the medical treatment he is receiving at the hands of Respondent's medical personnel. Petitioner does not challenge either his conviction or sentence and, indeed, provides no information whatsoever regarding the offense or sentence upon which he is incarcerated. Rather, the petition contains a series of charges about the circumstances under which he is being medically treated.

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

In this case, Petitioner complains that CDCR is not providing adequate or proper medical
care and that the care being provided is being provided in either an illegal or inhumane manner.
Petitioner is thus challenging the conditions of his confinement, not the fact or duration of that
confinement. Thus, Petitioner is not entitled to habeas corpus relief, and this petition must be
dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way of a civil
rights complaint pursuant to 42 U.S.C. § 1983.

ORDER

Accordingly, the Court HEREBY ORDERS as follows:

1. The petition for writ of habeas corpus (Doc. 1), is DISMISSED because the petition
does not allege grounds that would entitle Petitioner to habeas corpus relief; and
2. The Clerk of the Court is DIRECTED to terminate this action in its entirety, and to
send Petitioner the standard form for claims pursuant to 42 U.S.C. § 1983.

IT IS SO ORDERED.

Dated: April 1, 2009

/s/ Theresa A. Goldner
UNITED STATES MAGISTRATE JUDGE