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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DENNIS LEROY HAMILTON,

1:09-cv-00569 MJS (HC)

Petitioner,

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

v.

[Doc. 1]

F. GONZALEZ, Warden, 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 has consented to the jurisdiction of the United States Magistrate Judge. Local Rule 305(b).

Petitioner filed the instant petition for writ of habeas corpus on March 30, 2009 (Court Doc. 1.) Petitioner challenges a rules violation he received for battery on a peace officer. The violation did not result in the loss of any custody credits.

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

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the

1 respondent's motion to dismiss, or after an answer to the petition has been filed. A petition for
2 habeas corpus should not be dismissed without leave to amend unless it appears that no tenable
3 claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th
4 Cir. 1971).

5 B. Failure to State Cognizable Claim

6 The instant petition must be dismissed because it does not challenge the fact or duration
7 of Petitioner's confinement. A federal court may only grant a petition for writ of habeas corpus
8 if the petitioner can show that "he is in custody in violation of the Constitution" 28 U.S.C. §
9 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality
10 or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,
11 Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the
12 Rules Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. §
13 1983 is the proper method for a prisoner to challenge the conditions of that confinement.
14 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
15 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. "Habeas
16 jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison
17 condition will not necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850,
18 859 (9th Cir. 2003).

19 The disciplinary records attached to the instant petition indicate that Petitioner did not
20 lose any custody credits. As a consequence, Petitioner's claims challenging the constitutionality
21 of the disciplinary proceedings do not implicate the fact or duration of his confinement.¹
22 Therefore, Petitioner's claims are not cognizable grounds for federal habeas corpus relief and
23 must be dismissed.

24 ORDER

25 Based on the foregoing, it is HEREBY ORDERED that:

- 26 1. The instant petition for writ of habeas corpus be DISMISSED;

27 _____
28 ¹ When there has been no loss of time credits, the proper avenue for challenging the disciplinary action is
pursuant to a civil rights complaint under 42 U.S.C. § 1983.

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- 2. The Clerk of Court be directed to terminate this action.
- 3. The Court declines to issue a Certificate of Appealability. 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (in order to obtain a COA, petitioner must show: (1) that jurists of reason would find it debatable whether the petition stated a valid claim of a denial of a constitutional right; and (2) that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). In the present case, the Court does not find that jurists of reason would not find it debatable whether the petition was properly dismissed for failure to state a cognizable claim for federal habeas corpus relief under 28 U.S.C. § 2254. Petitioner has not made the required substantial showing of the denial of a constitutional right.

IT IS SO ORDERED.

Dated: May 3, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE