

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

AARON TYLER HUGHES,)	1:10cv00095 AWI DLB
)	
)	
Plaintiff,)	FINDINGS AND RECOMMENDATION
)	REGARDING DISMISSAL OF ACTION
v.)	
)	
GARY COLLINS, et al.,)	
)	
)	
Defendants.)	

Plaintiff, a California state prisoner appearing pro se and in forma pauperis, filed the instant action on January 19, 2010. He names Parole Agent Gary Collins, Parole Agent Drew White, Dr. Rau Guru, the State of California and the Bakersfield Parole Office as Defendants.

DISCUSSION

A. Screening Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint

1 can be cured by amendment. Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000) (en banc).

2 B. Plaintiff's Allegations

3 Plaintiff alleges that Parole Agent Gary Collins manipulated paperwork, which resulted in
4 his unjust imprisonment and revocation of his parole. By way of relief, Plaintiff asks that a jury
5 decide if Defendants were wrong for sending him to prison. He also requests that the State of
6 California compensate him in the amount of three million dollars.

7 C. Analysis

8 When a prisoner challenges the legality or duration of his custody, or raises a
9 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a
10 writ of habeas corpus. Wilkinson v. Dotson, 544 U.S. 74, 125 S.Ct. 1242, 1245-48 (2005);
11 Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir. 1990), cert.
12 denied 11 S.Ct. 1090 (1991). Moreover, when seeking relief for an allegedly unconstitutional
13 conviction or imprisonment, “a § 1983 plaintiff must prove that the conviction or sentence has
14 been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
15 authorized to make such determination, or called into question by a federal court’s issuance of a
16 writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). “A
17 claim . . . bearing that relationship to a conviction or sentence that has *not* been so invalidated is
18 not cognizable under § 1983.” Id. at 488 (emphasis in original).

19 Plaintiff may not at this time bring a civil rights action arising out of his allegedly
20 wrongful parole revocation. Plaintiff’s sole remedy is to file a petition for writ of habeas corpus.

21 **RECOMMENDATION**

22 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed, without
23 prejudice, based on Plaintiff’s failure to state a claim upon which relief may be granted under
24 section 1983. Plaintiff cannot cure the above deficiencies and leave to amend would be futile.

25 These findings and recommendations will be submitted to the Honorable Anthony W.
26 Ishii, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
27 being served with these Findings and Recommendations, Plaintiff may file written objections
28 with the Court. The document should be captioned “Objections to Magistrate Judge's Findings

1 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
2 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
3 (9th Cir. 1991).

4 IT IS SO ORDERED.

5 **Dated: July 22, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28