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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHAWN P. JOHNSON,

1:10-cv-00300-LJO-DLB (HC)

Petitioner,

ORDER GRANTING RESPONDENT’S
MOTION TO DISMISS THE INSTANT
PETITION FOR FAILURE TO STATE A
COGNIZABLE CLAIM, DIRECTING CLERK
OF COURT TO TERMINATE ACTION, AND
DECLINING TO ISSUE A CERTIFICATE OF
APPEALABILITY

v.

KELLY HARRINGTON,

Respondent.

/ [Doc. 12]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

BACKGROUND

Petitioner filed the instant petition for writ of habeas corpus on February 22, 2010. (Court Doc. 1.) Respondent filed the instant motion to dismiss on April 23, 2010, for lack of subject matter jurisdiction. (Court Doc. 12.) Petitioner did not file an opposition.

DISCUSSION

I. Procedural Grounds for Motion to Dismiss

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases.

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1 II. Failure to State a Cognizable Claim

2 In the instant petition, Petitioner’s sole claim for relief challenges a 2007 amendment to
3 California Penal Code section 2085.5 as a violation of the Ex Post Facto Clause. A federal court
4 may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in
5 custody in violation of the Constitution" 28 U.S.C. § 2254(a). A habeas corpus petition is
6 the correct method for a prisoner to challenge the “legality or duration” of his confinement.

7 Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475,
8 485 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

9 In this instance, Petitioner’s challenge to the collection of his restitution fine does not
10 implicate the legality or duration of his conviction. Therefore, section 2254 is not the proper
11 avenue for presenting this claim.

12 Moreover, Petitioner’s challenge arises solely under California law. Under the plain
13 language of section 2254, a prisoner is not entitled to federal habeas corpus relief if he can
14 demonstrate he is in custody in violation of the United States Constitution or federal laws. 28
15 U.S.C. § 2254(a). Therefore, a claim arising strictly under state law is not cognizable in a federal
16 habeas corpus proceeding. Pulley v. Harris, 465 U.S. 37, 41 (1984) (“A federal court may not
17 issue the writ on the basis of a perceived error of state law.”); Gutierrez v. Griggs, 695 F.2d
18 1195, 1197-1198 (9th Cir. 1983).

19 In this instance, Petitioner challenges only the 2007 amendment to section 2085.5 and it
20 relates only to California law regarding the policy of victim restitution. Petitioner cannot convert
21 his state law claims into federal questions merely by labeling it as a federal due process violation.
22 Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996). Accordingly, Petitioner’s claim is not
23 cognizable as it raises purely a state law question, and the petition must be dismissed.

24 ORDER

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

- 26 1. Respondent’s motion to dismiss the instant petition for failure to state a
27 cognizable claim is GRANTED;
- 28 2. The Clerk of Court is directed to terminate the action; and

