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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEPHEN GARCIA,)	1:10-cv-00522-SMS-HC
)	
Petitioner,)	ORDER DISMISSING PETITION FOR
)	WRIT OF HABEAS CORPUS
)	
v.)	ORDER DIRECTING THE CLERK TO
)	ENTER JUDGMENT AND CLOSE THE CASE
FRESNO CORRECTIONAL)	
DEPARTMENT,)	ORDER DECLINING TO ISSUE A
)	CERTIFICATE OF APPEALABILITY
Respondent.)	
)	ORDER DIRECTING THE CLERK TO MAIL
)	A CIVIL RIGHTS FORM TO PETITIONER

On March 24, 2010, Petitioner filed a petition for writ of habeas corpus in this Court. He is currently incarcerated at the Fresno County Jail for a probation violation. (Pet. p. 2.) On April 1, 2010, Petitioner filed a signed, written form indicating his consent to have a United States Magistrate Judge conduct all further proceedings in this case.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition "[i]f it plainly

1 appears from the petition and any attached exhibits that the
2 petitioner is not entitled to relief in the district court....”
3 Habeas Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
4 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.
5 1990). Habeas Rule 2(c) requires that a petition 1) specify all
6 grounds of relief available to the Petitioner; 2) state the facts
7 supporting each ground; and 3) state the relief requested. Notice
8 pleading is not sufficient; rather, the petition must state facts
9 that point to a real possibility of constitutional error. Rule 4,
10 Adv. Comm. Notes, 1976 Adoption; O’Bremski v. Maass, 915 F.2d at
11 420 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n. 7 (1977)).

12 Further, the Court may dismiss a petition for writ of habeas
13 corpus either on its own motion under Rule 4, pursuant to the
14 respondent's motion to dismiss, or after an answer to the
15 petition has been filed. Advisory Committee Notes to Habeas Rule
16 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
17 (9th Cir. 2001).

18 II. Conditions of Confinement

19 A federal court may only grant a petition for writ of habeas
20 corpus if the petitioner can show that "he is in custody in
21 violation of the Constitution or laws or treaties of the United
22 States." 28 U.S.C. § 2254(a). A habeas corpus petition is the
23 correct method for a prisoner to challenge the legality or
24 duration of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th
25 Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 485
26 (1973)); Advisory Committee Notes to Rule 1 of the Rules
27 Governing Section 2254 Cases, 1976 Adoption.

28 In contrast, a civil rights action pursuant to 42 U.S.C. §

1 1983 is the proper method for a prisoner to challenge the
2 conditions of that confinement. McCarthy v. Bronson, 500 U.S.
3 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at
4 574; Advisory Committee Notes to Rule 1 of the Rules Governing
5 Section 2254 Cases, 1976 Adoption.

6 In this case, Petitioner alleges that staff at the jail were
7 negligent with respect to medical and disciplinary matters by not
8 disciplining other inmates who assaulted Petitioner while he was
9 in custody; denied Petitioner medical care for a month for a
10 broken jaw; and provided inadequate medical treatment. Petitioner
11 is not challenging a conviction or sentence; rather, he is
12 challenging the conditions of his confinement. Thus, Petitioner
13 is not entitled to habeas corpus relief, and this petition must
14 be dismissed.

15 Should Petitioner wish to pursue his claims, he must do so
16 by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.
17 The Clerk will be directed to send an appropriate form complaint
18 to Petitioner.

19 III. Certificate of Appealability

20 Unless a circuit justice or judge issues a certificate of
21 appealability, an appeal may not be taken to the court of appeals
22 from the final order in a habeas proceeding in which the
23 detention complained of arises out of process issued by a state
24 court. 28 U.S.C. § 2253(c) (1) (A); Miller-El v. Cockrell, 537 U.S.
25 322, 336 (2003). A certificate of appealability may issue only if
26 the applicant makes a substantial showing of the denial of a
27 constitutional right. § 2253(c) (2). Under this standard, a
28 petitioner must show that reasonable jurists could debate whether

1 the petition should have been resolved in a different manner or
2 that the issues presented were adequate to deserve encouragement
3 to proceed further. Miller-El v. Cockrell, 537 U.S. at 336
4 (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). A
5 certificate should issue if the Petitioner shows that jurists of
6 reason would find it debatable whether the petition states a
7 valid claim of the denial of a constitutional right and that
8 jurists of reason would find it debatable whether the district
9 court was correct in any procedural ruling. Slack v. McDaniel,
10 529 U.S. 473, 483-84 (2000). In determining this issue, a court
11 conducts an overview of the claims in the habeas petition,
12 generally assesses their merits, and determines whether the
13 resolution was debatable among jurists of reason or wrong. Id. It
14 is necessary for an applicant to show more than an absence of
15 frivolity or the existence of mere good faith; however, it is not
16 necessary for an applicant to show that the appeal will succeed.
17 Id. at 338.

18 A district court must issue or deny a certificate of
19 appealability when it enters a final order adverse to the
20 applicant. Rule 11(a) of the Rules Governing Section 2254 Cases.

21 Here, because Petitioner's claims relate only to conditions
22 of confinement, jurists of reason would not find it debatable
23 whether the Court was correct in its ruling. Accordingly,
24 Petitioner has not made a substantial showing of the denial of a
25 constitutional right, and the Court declines to issue a
26 certificate of appealability.

27 IV. Disposition

28 Accordingly, IT IS HEREBY ORDERED that:

1 1) The petition for writ of habeas corpus IS DISMISSED
2 without prejudice to Petitioner's right to file a civil rights
3 action pursuant to 28 U.S.C. § 1983; and

4 2) The Clerk of Court is DIRECTED to enter judgment and
5 close the case; and

6 3) The Court DECLINES TO ISSUE a certificate of
7 appealability; and

8 4) The Clerk IS DIRECTED to mail to Petitioner a form for
9 filing a civil rights complaint pursuant to 42 U.S.C. § 1983 by a
10 person in custody.

11
12 IT IS SO ORDERED.

13 **Dated:** May 4, 2010

 /s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE