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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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| MATHEW FULTON, |) | 1:10-CV-01180 SMS HC |
| |) | |
| Petitioner, |) | ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS |
| |) | |
| v. |) | ORDER DIRECTING CLERK OF COURT TO ENTER JUDGMENT AND CLOSE CASE |
| |) | |
| F. GONZALEZ, |) | ORDER DECLINING ISSUANCE OF CERTIFICATE OF APPEALABILITY |
| |) | |
| Respondent. |) | |

On June 16, 2010, Petitioner filed the instant petition for writ of habeas corpus.

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 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

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

4 In this case, Petitioner challenges prison conditions resulting from a rules violation. He seeks
5 a modification of his living conditions and exercise program. Petitioner is challenging the conditions
6 of his confinement, not the fact or duration of his confinement. Thus, Petitioner is not entitled to
7 habeas corpus relief, and this petition must be dismissed. Should Petitioner wish to pursue his
8 claims, he must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.

9 CERTIFICATE OF APPEALABILITY

10 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
11 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-
12 El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue
13 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

14 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
15 district judge, the final order shall be subject to review, on appeal, by the court
of appeals for the circuit in which the proceeding is held.

16 (b) There shall be no right of appeal from a final order in a proceeding to test the
17 validity of a warrant to remove to another district or place for commitment or trial
a person charged with a criminal offense against the United States, or to test the
18 validity of such person's detention pending removal proceedings.

19 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

20 (A) the final order in a habeas corpus proceeding in which the
21 detention complained of arises out of process issued by a State
court; or

22 (B) the final order in a proceeding under section 2255.

23 (2) A certificate of appealability may issue under paragraph (1) only if the
24 applicant has made a substantial showing of the denial of a constitutional right.

25 (3) The certificate of appealability under paragraph (1) shall indicate which
26 specific issue or issues satisfy the showing required by paragraph (2).

27 If a court denies a petitioner's petition, the court may only issue a certificate of appealability
28 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or
that jurists could conclude the issues presented are adequate to deserve encouragement to proceed

1 further.” Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the
2 petitioner is not required to prove the merits of his case, he must demonstrate “something more than
3 the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 123 S.Ct. at
4 1040.

5 In the present case, the Court finds that reasonable jurists would not find the Court’s
6 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
7 deserving of encouragement to proceed further. Petitioner has not made the required substantial
8 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a
9 certificate of appealability.

10 **ORDER**

11 Accordingly, IT IS HEREBY ORDERED:

- 12 1) The petition for writ of habeas corpus is DISMISSED for failure to allege grounds that
13 would entitle Petitioner to habeas corpus relief;
14 2) The Clerk of Court is DIRECTED to enter judgment and close the case;
15 3) The Clerk of Court is DIRECTED to send Petitioner blank forms for filing a civil rights
16 action pursuant to 42 U.S.C. § 1983; and
17 4) The Court DECLINES to issue a certificate of appealability.

18
19 IT IS SO ORDERED.

20 **Dated:** August 3, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE