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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NOEL O. ORTEGA,)	1:10-CV-01278 SMS HC
)	
Petitioner,)	ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS
)	
v.)	ORDER DIRECTING CLERK OF COURT TO ENTER JUDGMENT AND CLOSE CASE
)	
DERRAL G. ADAMS,)	ORDER DIRECTING CLERK OF COURT TO SEND PETITIONER FORMS FOR FILING A CIVIL RIGHTS ACTION
Respondent.)	
		ORDER DECLINING ISSUANCE OF CERTIFICATE OF APPEALABILITY

On July 12, 2010, Petitioner filed the instant petition for writ of habeas corpus in the Sacramento Division of this Court. By order dated July 19, 2010, the case was transferred to the Fresno Division and received in this Court. Petitioner has consented to the jurisdiction of the magistrate judge pursuant to 28 U.S.C. § 636(c).

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

1 prisoner to challenge “the lawfulness of confinement or to particulars affecting its duration.” Hill v.
2 McDonough, 547 U.S. 573, 579 (2006); Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991); Preiser v.
3 Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing
4 Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper
5 method for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500
6 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee
7 Notes to Rule 1 of the Rules Governing Section 2254 Cases.

8 In this case, Petitioner claims he has been wrongfully placed on single-cell status because
9 prison officials are using old information which is not credible or reliable. Petitioner's claims are not
10 cognizable in federal habeas corpus. “[H]abeas jurisdiction is absent, and a § 1983 action proper,
11 where a successful challenge to a prison condition will not necessarily shorten the prisoner's
12 sentence.” Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir.2003). Petitioner is challenging the
13 conditions of his confinement. Accordingly, Petitioner may not proceed with his claims by way of
14 federal habeas corpus and the petition must be dismissed. Should Petitioner wish to pursue his
15 claims, he must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.

16 CERTIFICATE OF APPEALABILITY

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

21 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
22 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.

23 (b) There shall be no right of appeal from a final order in a proceeding to test the
24 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
25 validity of such person’s detention pending removal proceedings.

26 (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—

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

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

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

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

If a court denies a petitioner’s petition, the court may only issue a certificate of appealability “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 further.” Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he must demonstrate “something more than the absence of frivolity or the existence of mere good faith on his . . . part.” Miller-El, 123 S.Ct. at 1040.

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

ORDER

Accordingly, IT IS HEREBY ORDERED:

- 1) The petition for writ of habeas corpus is DISMISSED WITH PREJUDICE;
- 2) The Clerk of Court is DIRECTED to enter judgment and close the case;
- 3) The Clerk of Court is DIRECTED to send Petitioner the standard form for claims pursuant to 42 U.S.C. § 1983; and
- 4) The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: August 5, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE