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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JOHN MONTUE,	)	1:10-cv-01592-JLT HC
	)	
Petitioner,	)	FINDINGS AND RECOMMENDATIONS
	)	TO DISMISS PETITION FOR WRIT OF
v.	)	HABEAS CORPUS (Doc. 1)
	)	
KATHLEEN ALLISON, Warden,	)	ORDER DIRECTING THAT OBJECTIONS BE
	)	FILED WITHIN TWENTY DAYS
Respondent.	)	
_____	)	ORDER DIRECTING CLERK OF COURT TO
	)	ASSIGN UNITED STATES DISTRICT JUDGE
	)	TO CASE

Petitioner is a state prisoner proceeding pro se on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 2, 2010, Petitioner filed his petition for writ of habeas corpus in this Court. (Doc. 1).

Petitioner alleges that he is presently incarcerated at the California Substance Abuse Treatment Facility (“CSATF”), serving a sentence of life with the possibility of parole for his 1979 conviction in the Sacramento County Superior Court for kidnaping and robbery. (Doc. 1, p. 1). However, Petitioner does not challenge either his conviction or sentence. Instead, Petitioner alleges that prison personnel “inappropriately confiscated petitioner’s 13 inch color television and donated it to the state, in violation of his due process rights, while his administrative appeal was still pending. (Id., p. 4). The documents appended to the petition indicate that when Petitioner arrived at CSATF, he was advised that he could not keep his 13-inch color television.

1 Petitioner was told that the shipping cost to send his television to his relatives would be twenty  
2 dollars. Subsequently, Petitioner alleges that his mother sent twenty dollars that was credited to  
3 Petitioner's prison trust account. However, previous charges immediately reduced Petitioner's  
4 trust account balance to zero. (Doc. 1, p. 6). Because Petitioner did not have sufficient funds in  
5 his prison trust account to send the television to relatives, the television was donated to the State  
6 of California by prison staff. (Doc. 1, p. 20).

### 7 DISCUSSION

8 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary  
9 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it  
10 plainly appears from the face of the petition . . . that the petitioner is not entitled to relief." Rule  
11 4 of the Rules Governing 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490  
12 (9th Cir.1990). A federal court may only grant a petition for writ of habeas corpus if the  
13 petitioner can show that "he is in custody in violation of the Constitution . . . ." 28 U.S.C. §  
14 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality  
15 or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*,  
16 Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Ramirez v. Galaza, 334 F.3d 850, 859 (9<sup>th</sup> Cir.  
17 2003)("[H]abeas jurisdiction is absent...where a successful challenge to a prison condition will  
18 not necessarily shorten the prisoner's sentence."); Advisory Committee Notes to Rule 1 of the  
19 Rules Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. §  
20 1983 is the proper method for a prisoner to challenge the conditions of that confinement.  
21 McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at  
22 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

23 In this case, as mentioned, Petitioner alleges that prison authorities inappropriately  
24 confiscated and donated his 13-inch color television set because Petitioner did not have sufficient  
25 funds in his prison trust account to send the television to relatives. Petitioner does not indicate  
26 what relief he requests, although it is difficult to see how Petitioner could be seeking any relief  
27 other than return of the donated television set or the crediting of its monetary equivalent to his  
28 prison trust account. Petitioner is thus challenging the conditions of his confinement, not the fact

1 or duration of that confinement. Therefore, Petitioner is not entitled to habeas corpus relief, and  
2 this petition should be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do  
3 so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.

4 **ORDER**

5 The Court HEREBY ORDERS as follows:

- 6 1. The Clerk of the Court is DIRECTED to assign a United States District Judge to  
7 this case.

8 **RECOMMENDATION**

9 For the foregoing reasons, the Court RECOMMENDS:

- 10 1. That the petition for writ of habeas corpus (Doc. 1), be DISMISSED because the  
11 petition does not allege grounds that would entitle Petitioner to habeas corpus relief;

12 This Findings and Recommendation is submitted to the United States District Judge  
13 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the  
14 Local Rules of Practice for the United States District Court, Eastern District of California.

15 Within twenty days after being served with a copy, any party may file written objections with the  
16 court and serve a copy on all parties. Such a document should be captioned “Objections to  
17 Magistrate Judge’s Findings and Recommendation.” The Court will then review the Magistrate  
18 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file  
19 objections within the specified time may waive the right to appeal the District Court’s order.

20 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21  
22 IT IS SO ORDERED.

23 Dated: September 16, 2010

24 /s/ Jennifer L. Thurston  
25 UNITED STATES MAGISTRATE JUDGE  
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