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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOWARD YOUNG,)	1:10-CV-02400 OWW GSA HC
)	
Petitioner,)	
)	FINDINGS AND RECOMMENDATION
v.)	REGARDING PETITION FOR WRIT OF
)	HABEAS CORPUS
)	
K. HARRINGTON, Warden,)	
)	
Respondent.)	
_____)	

On December 27, 2010, Petitioner filed a petition for writ of habeas corpus in this Court.

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 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at

1 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

2 In this case, Petitioner claims prison staff have denied him: educational, vocational, and
3 rehabilitation programming; work assignment consideration; reduction of custody status; transfer to
4 another prison; single-cell status; and meals according to his religious beliefs. Petitioner is
5 challenging the conditions of his confinement, not the fact or duration of that confinement. Thus,
6 Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed. Should
7 Petitioner wish to pursue his claims, Petitioner must do so by way of a civil rights complaint
8 pursuant to 42 U.S.C. § 1983.

9 **RECOMMENDATION**

10 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be
11 DISMISSED because the petition does not allege grounds that would entitle Petitioner to habeas
12 corpus relief. The Court further RECOMMENDS that the Clerk of Court be DIRECTED to send
13 Petitioner the standard form for claims pursuant to 42 U.S.C. § 1983.

14 This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger, United
15 States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of
16 the Local Rules of Practice for the United States District Court, Eastern District of California.
17 Within thirty (30) days after service of the Findings and Recommendation, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall
20 be served and filed within fourteen (14) days after service of the objections. The Court will then
21 review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised
22 that failure to file objections within the specified time may waive the right to appeal the District
23 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 **Dated: January 27, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE