

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEREK WOODEN,

1:11-cv-00811-LJO-DLB (HC)

Petitioner,

FINDINGS AND RECOMMENDATION
REGARDING PETITION FOR WRIT OF
HABEAS CORPUS

v.

[Doc. 1]

DERRAL ADAMS,

Respondent.

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on November 5, 2010. Petitioner challenges the sufficiency of evidence regarding his gang validation and placement in the Security Housing Unit (“SHU”). For the reasons explained below, the petition must be dismissed.

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 face of 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. §

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

8 In this case, Petitioner is challenging the sufficiency of the evidence of his gang
9 validation which resulted in his placement in the security housing unit. Specifically, Petitioner
10 claims that he was segregated to an indefinite term in the security housing unit without sufficient
11 evidence to demonstrate that he is an active member of a gang. Petitioner is challenging the
12 conditions of his confinement, not the fact or duration of that confinement. Thus, Petitioner is
13 not entitled to habeas corpus relief, and this petition must be dismissed. Should Petitioner wish
14 to pursue his claims, he must do so by way of a civil rights complaint pursuant to 42 U.S.C. §
15 1983.

16 To the extent Petitioner contends that his placement in the SHU has prevented him from
17 earning custody credits, there is no federal liberty interest in an inmate’s ability to earn future
18 credits, as distinct from credits already earned. Sandin v. Conner, 315 U.S. 472 (1995).

19 RECOMMENDATION

20 Accordingly, the Court RECOMMENDS that the petition for writ of habeas corpus be
21 DISMISSED because the petition does not allege grounds that would entitle Petitioner to habeas
22 corpus relief.

23 This Findings and Recommendation is submitted to the assigned United States District
24 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
25 Local Rules of Practice for the United States District Court, Eastern District of California.
26 Within thirty (30) days after being served with a copy, any party may file written objections with
27 the court and serve a copy on all parties. Such a document should be captioned “Objections to
28 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served

1 and filed within fourteen (14) days after service of the objections. The Court will then review the
2 Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that
3 failure to file objections within the specified time may waive the right to appeal the District
4 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 IT IS SO ORDERED.

6 **Dated: June 29, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28