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

MICHAEL ISREAL,) Case No.: 1:12-cv-01551-LJO-JLT
)
) Petitioner,) FINDINGS AND RECOMMENDATIONS TO
) DISMISS THE PETITION FOR LACK OF
) v.) JURISDICTION
)
) RALPH M. DIAZ,)
) ORDER DIRECTING THAT OBJECTIONS BE
) FILED WITHIN TWENTY DAYS
)
)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The instant petition was filed on September 20, 2012. (Doc. 1). In his petition, Petitioner does not challenge either his conviction or his sentence. Rather, Petitioner contends that Respondent is “arbitrarily and wrongfully” violating Petitioner’s liberty interests by relying on false memoranda and printouts in Petitioner’s prison file to classify Petitioner at a higher custody level than Petitioner feels is warranted. (Doc. 1, p. 5).¹ As relief, Petitioner seeks an order from this Court expunging his file of the allegedly false reports, restoring him to a less severe custody classification, restoring his housing status, and transferring him to a prison in Missouri. (Id., p. 15).

¹ Specifically, Petitioner contends that his custody level was increased as a result of a false memorandum placed in his file indicating that he had escaped from a Missouri prison prior to being arrested in California on the crimes for which he is now imprisoned. (Doc. 1, p. 23). At another point, Petitioner argues that the false memos include claims that he was incarcerated in Missouri because he murdered two prison guards and killed his cellmate with a sheet. (Doc. 1, p. 24).

1 For the reasons set forth below, the Court concludes that it lacks habeas jurisdiction because
2 Petitioner is not challenging either his conviction or his sentence. Therefore, the petition should be
3 dismissed.

4 DISCUSSION

5 A. Preliminary Review of Petition.

6 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition
7 if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is
8 not entitled to relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases. The
9 Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas
10 corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after
11 an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.2001).

12 B. Habeas Jurisdiction.

13 A federal court may only grant a petition for writ of habeas corpus if the petitioner can show
14 that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). A habeas corpus
15 petition is the correct method for a prisoner to challenge the “legality or duration” of his confinement.
16 Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485, 93
17 S. Ct. 1827 (1973); Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003)(“[H]abeas jurisdiction is
18 absent, and a § 1983 action proper, where a successful challenge to a prison condition will not
19 necessarily shorten the prisoner’s sentence.”); Advisory Committee Notes to Rule 1 of the Rules
20 Governing Section 2254 Cases. Indeed, claims challenging the validity of a prisoner’s continued
21 incarceration, including the fact or length of the custody, lie within the “heart of habeas corpus” and
22 are cognizable only in federal habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 498-99, 499 n.14
23 (1973). In contrast, an action pursuant to 42 U.S.C. § 1983 is appropriate for a state prisoner
24 challenging the conditions of prison life but not the fact or length of the custody. McCarthy v.
25 Bronson, 500 U.S. 136, 141-42 (1991); Preiser v. Rodriguez, 411 U.S. at 499; Badea v. Cox, 931
26 F.2d 573, 574 (9th Cir. 1991).

27 With respect to prison disciplinary proceedings, it is established that a constitutional claim
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1 concerning the application of rules administered by a prison or penal administrator that challenges the
2 duration of a sentence is a cognizable claim of being in custody in violation of the Constitution
3 pursuant to 28 U.S.C. § 2254. See, e.g., Superintendent v. Hill, 472 U.S. 445, 454 (1985)
4 (determining a procedural due process claim concerning loss of time credits resulting from
5 disciplinary procedures and findings). The Supreme Court has held that challenges to prison
6 disciplinary adjudications that have resulted in a loss of time credits must be raised in a federal habeas
7 corpus action and not in a § 1983 action because such a challenge is to the very fact or duration of
8 physical imprisonment, and the relief sought is a determination of entitlement of immediate or
9 speedier release. Preiser v. Rodriguez, 411 U.S. 475, 500.

10 The Supreme Court's decisions concerning any boundaries between habeas jurisdiction and §
11 1983 jurisdiction have been rendered in cases involving § 1983 proceedings. Thus, it is established
12 that regardless of the precise relief sought, an action pursuant to § 1983 concerning prison
13 administrative processes is barred if success in the action would necessarily demonstrate the invalidity
14 of the confinement or its duration, or necessarily imply the invalidity of a conviction or sentence.
15 Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) (parole processes). However, the limits on habeas
16 jurisdiction, or the appropriate extent of any overlap between habeas and § 1983, have not been
17 definitively addressed by the Supreme Court. The Supreme Court has adverted to the possibility of
18 habeas as a potential alternative remedy to an action under § 1983 for unspecified additional and
19 unconstitutional restraints during lawful custody, Preiser v. Rodriguez, 411 U.S. at 499-500, but it has
20 declined to address whether a writ of habeas corpus may be used to challenge conditions of
21 confinement as distinct from the fact or length of confinement itself, see, Bell v. Wolfish, 441 U.S.
22 520, 527 n.6 (1979). Nevertheless, the Court continues to recognize a "core" of habeas corpus that
23 refers to suits where success would inevitably affect the legality or duration of confinement. For
24 example, in Wilkinson, the Court noted that if success on a claim would mean at most a new
25 opportunity for review of parole eligibility, or a new parole hearing at which authorities could
26 discretionarily decline to shorten a prison term, then success would not inevitably lead to release, and
27 the suit would not lie at the core of habeas corpus. Wilkinson, 544 U.S. at 82.

1 In the singular context of parole, cases in this circuit have recognized a possibility of habeas
2 jurisdiction in suits that do not fall within the core of habeas corpus. Bostic v. Carlson, 884 F.3d 1267
3 (9th Cir. 1989) (expungement of disciplinary finding likely to accelerate eligibility for parole)¹;
4 Docken v. Chase, 393 F.3d 1024 (9th Cir. 2004) (a claim challenging the constitutionality of the
5 frequency of parole reviews, where the prisoner was seeking only equitable relief, was held
6 sufficiently related to the duration of confinement). However, relief pursuant to § 1983 remains an
7 appropriate remedy for claims concerning administrative decisions made in prison where success
8 would not necessarily imply the validity of continuing confinement. Docken v. Chase, 393 F.3d at
9 1030 (characterizing Neal v. Shimoda, 131 F.3d 818 (9th Cir. 1997) as holding that a § 1983 suit is an
10 appropriate remedy for challenges to conditions [there, administrative placement in a sex offender
11 program affecting eligibility for parole] which do not necessarily imply the invalidity of continuing
12 confinement).

13 Nevertheless, it is established in this circuit that where a successful challenge to a disciplinary
14 hearing or administrative sanction will not necessarily shorten the overall length of confinement, then
15 habeas jurisdiction is lacking. In Ramirez v. Galaza, 334 F.3d 850 (9th Cir. 2003), a prisoner sought
16 relief pursuant to § 1983 for allegedly unconstitutional disciplinary proceedings that resulted in
17 administrative segregation. It was held that § 1983 was the appropriate remedy because the alleged
18 constitutional errors did not affect the overall length of the prisoner’s confinement; success in the §
19 1983 action would not necessarily result in an earlier release from incarceration, and the § 1983 suit
20 did not intrude upon the core or “heart” of habeas jurisdiction. Ramirez, 334 F.3d at 852, 858.

21 The court in Ramirez went further and considered the related question of the extent of habeas
22 corpus jurisdiction, expressly stating that its holding “also clarifies our prior decisions addressing the
23 availability of habeas corpus to challenge the conditions of imprisonment.” 334 F.3d at 858. The
24 court reviewed the decisions in Bostic v. Carlson and Neal v. Shimoda and concluded as follows:

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27 ¹ The Court notes that Bostic involved a suit pursuant to 28 U.S.C. § 2241, not § 2254.

1 Our decision in Neal v. Shimoda, 131 F.3d 818 (9th Cir.1997), illustrates the importance of
2 measuring the likelihood that a suit under § 1983 will affect the length of the prisoner's
3 confinement. In Neal, two state prisoners filed suits under § 1983 alleging that they were
4 classified as sex offenders in violation of the Due Process and Ex Post Facto guarantees. Id. at
5 822-23. Among other harms, both inmates argued that the classification affected their
6 eligibility for parole. Id. We held that Heck did not require the inmates to invalidate their
7 classification before bringing suit under § 1983, because a favorable judgment “will in no way
8 guarantee parole or necessarily shorten their prison sentences by a single day.” Id. at 824. The
9 prisoner suits did not seek to overturn a disciplinary decision that increased their period of
10 incarceration. Rather, a successful § 1983 action would provide only “a ticket to get in the door
11 of the parole board.” Id. A favorable judgment, therefore, would not “undermine the validity of
12 their convictions,” or alter the calculus for their possible parole. Id.

13 Neal makes clear that under Preiser habeas jurisdiction is proper where a challenge to prison
14 conditions would, if successful, necessarily accelerate the prisoner's release. Thus, Neal
15 accords with our holding here that habeas jurisdiction is absent, and a § 1983 action proper,
16 where a successful challenge to a prison condition will not necessarily shorten the prisoner's
17 sentence.

18 Ramirez, 334 F.3d at 858-59.

19 Thus, habeas jurisdiction might be predicated on some “conditions” claims affecting parole *if*
20 *there is a sufficient nexus to the length of imprisonment or a sufficient likelihood of affecting the*
21 *overall length of a prisoner’s confinement.* Docken v. Chase, 393 F.3d at 1030-31. However, the
22 appellate court has emphasized that measurement of the likelihood will result in an absence of habeas
23 jurisdiction *where the challenge will not necessarily shorten the overall sentence.* Ramirez, 334 F.3d
24 at 859. In Ramirez, expunging the disciplinary action was not shown to be likely to accelerate
25 eligibility for parole; rather, success there would have meant only an opportunity to seek parole from a
26 board that could deny parole on any ground already available to it. Thus, the suit did not threaten to
27 advance the parole date. Id. at 859.

28 C. Habeas Jurisdiction Is Absent.

In contrast to the situations discussed above, where the challenged proceedings could have an
effect on credits or the actual date of parole, thus shortening or lengthening the petitioner’s sentence
and thereby conferring habeas jurisdiction, in this case Petitioner is challenging only CDCR’s
administrative decision regarding Petitioner’s custody status as well as Respondent’s use of certain
documents in his prison file as a basis for that custody classification. As such, Petitioner’s claims do
not in any way implicate circumstances that would affect the fact or duration of Petitioner’s

1 confinement.

2 The Court further notes that Petitioner was committed to the California Department of
3 Corrections and Rehabilitation (“CDCR”) on December 18, 1979 to serve an indeterminate sentence
4 of 25-years-to-life, and that Petitioner passed his minimum eligible parole date (“MEPD”) on
5 November 23, 1995, seventeen years ago. (Doc. 1, p. 66).

6 As a state prisoner serving an indeterminate life sentence, Petitioner’s credit-earning is
7 governed by state regulations. Section 2290(a) of Title 15 provides as follows:

8 Life prisoners may earn post-conviction credit for each year spent in state prison. Post-
9 conviction credit for time served prior to the hearing at which a parole date is established shall
10 be considered at that parole consideration hearing. Thereafter, post-conviction credit for time
served since the last hearing shall be considered at progressive hearings. In no case may post-
conviction credit advance a release date earlier than the minimum eligible parole date.¹

11 Put simply, once Petitioner has reached his MEPD, his credit-earning potential as an inmate serving an
12 indeterminate life sentence has no bearing at all on the length of time he will actually remain in prison,
13 since, at that point, such a determination is made solely by the Board of Parole Hearings (“BPH”) after
14 conducting a suitability hearing. Petitioner has made no allegation, nor has he established, that
15 granting the relief he requests in the instant petition would have any material impact on the length of
16 his sentence, i.e., the date on which the BPH ultimately decides Petitioner is suitable for parole, if
17 ever. Because of this, the Court concludes that none of the alleged violations cited in the petition, if
18 corrected, would necessarily shorten Petitioner’s overall sentence. Ramirez, 334 F.3d at 859
19 (emphasis supplied). Thus, habeas jurisdiction is absent for and the petition should be dismissed.

20 Finally, for good reason, even where habeas jurisdiction does exist, federal courts are
21 nevertheless reticent to micro-manage a respondent’s decisions regarding the day-to-day handling of
22 prison discipline and inmate safety. “[F]ederal courts ought to afford appropriate deference and
23 flexibility to state officials trying to manage a volatile environment....Such flexibility is especially
24 warranted in the fine-tuning of the ordinary incidents of prison life....” Sandin v. Conner, 515 U.S.

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26 ¹Title 15 of the Code of California Regulations § 2000(b)(3) defines a “life prisoner” as “a prisoner serving a sentence of
27 life with the possibility of parole.” Life sentences may be imposed for, inter alia, both first and second degree murder.
28 Cal. Code Regs., tit. 15, § 2000(b)(3)(B and (C)). Here, Petitioner was sentenced to an indeterminate 25-year-to-life term
for first degree murder and robbery with use of a firearm. (Doc. 1, p. 66). Having been convicted of first degree murder,
Petitioner falls within the provisions of this regulation vis-a-vis his credit-earning ability.

1 472, 482 (1995). In Procunier v. Martinez, 416 U.S. 396, 404-405 (1974), overruled in part on other
2 grounds, Thornburgh v. Abbott, 490 U.S. 401 (1989), the Supreme Court explained the basis for this
3 deference:

4 Traditionally, federal courts have adopted a broad hands-off attitude toward problems of prison
5 administration. In part this policy is the product of various limitations on the scope of federal
6 review of conditions in state penal institutions. More fundamentally, this attitude springs from
7 complementary perceptions about the nature of the problems and the efficacy of judicial
8 intervention. Prison administrators are responsible for maintaining internal order and
9 discipline, for securing their institutions against unauthorized access or escape, and for
10 rehabilitating, to the extent that human nature and inadequate resources allow, the inmates
11 placed in their custody. The Herculean obstacles to effective discharge of these duties are too
apparent to warrant explication. Suffice it to say that the problems of prisons in America are
complex and intractable, and, more to the point, they are not readily susceptible of resolution
by decree. Most require expertise, comprehensive planning, and the commitment of resources,
all of which are peculiarly within the province of the legislative and executive branches of
government. For all of those reasons, courts are ill equipped to deal with the increasingly
urgent problems of prison administration and reform. Judicial recognition of that fact reflects
no more than a healthy sense of realism.

12 Procunier, 416 U.S. at 404-405. Thus, even if Petitioner's claim of improper classification were
13 cognizable in these habeas proceedings, for the reasons set forth in Sandin and Procunier, this Court
14 would be extremely chary of trying to second-guess Respondent's decision to classify Petitioner as it
15 has done.

16 **RECOMMENDATIONS**

17 Accordingly, the Court **HEREBY RECOMMENDS** that the habeas corpus petition be
18 **DISMISSED** for Petitioner's failure to state any claims for which habeas relief can be granted.

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

22 Within twenty (20) days after being served with a copy, any party may file written objections with the
23 court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate
24 Judge's Findings and Recommendation." Replies to the objections shall be served and filed within ten
25 (10) court days (plus three days if served by mail) after service of the objections. The Court will then
26 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised
27 that failure to file objections within the specified time may waive the right to appeal the District
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1 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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3 IT IS SO ORDERED.

4 Dated: October 18, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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