

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ARCHIE CRANFORD,

Petitioner,

v.

P.T. RENEE MEDINA,

Respondent.

Case No. 1:13-cv-00211-SAB (HC)

**ORDER DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, DENYING MOTION TO
AMEND AS MOOT, DIRECTING CLERK OF
COURT TO TERMINATE ACTION, AND
DECLINING TO ISSUE A CERTIFICATE OF
APPEALABILITY**

(ECF Nos. 1 & 4)

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States magistrate judge. Local Rule 305(b).

Petitioner filed the instant petition for writ of habeas corpus on February 8, 2013.

**I.
DISCUSSION****A. Failure to State Cognizable Claim**

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).

1 A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that
2 "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). A habeas corpus
3 petition is the correct method for a prisoner to challenge the "legality or duration" of his
4 confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411
5 U.S. 475, 485 (1973)); Advisory Committee Notes to Rule 1 of the Rules Governing Section
6 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method
7 for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500 U.S.
8 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee Notes
9 to Rule 1 of the Rules Governing Section 2254 Cases.
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11 In the instant petition, Petitioner contends that he has been subjected to extreme pain by
12 the delay in delivering his medication. Petitioner is challenging the conditions of his
13 confinement, not the fact or duration of that confinement. Thus, Petitioner is not entitled to
14 habeas corpus relief, and this petition must be dismissed. Should Petitioner wish to pursue his
15 claims, Petitioner must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983.
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17 **B. Certificate of Appealability**

18 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to rule
19 on whether a petitioner is entitled to a certificate of appealability in the same order in which the
20 petition is denied. The requirement that a petitioner seek a certificate of appealability is a gate-
21 keeping mechanism that protects the Court of Appeals from having to devote resources to
22 frivolous issues, while at the same time affording petitioners an opportunity to persuade the Court
23 that, through full briefing and argument, the potential merit of claims may appear. Lambright v.
24 Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000). However, a state prisoner seeking a writ of habeas
25 corpus has no absolute entitlement to appeal a district court's denial of his petition, and an appeal
26 is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003).
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1 The controlling statute, 28 U.S.C. § 2253, provides as follows:

2 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district
3 judge, the final order shall be subject to review, on appeal, by the court of appeals for the
4 circuit in which the proceeding is held.

5 (b) There shall be no right of appeal from a final order in a proceeding to test the validity
6 of a warrant to remove to another district or place for commitment or trial a person
7 charged with a criminal offense against the United States, or to test the validity of such
8 person's detention pending removal proceedings.

9 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may
10 not be taken to the court of appeals from--

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

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

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

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

18 This Court will issue a certificate of appealability when a petitioner makes a substantial
19 showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial
20 showing, the petitioner must establish that “reasonable jurists could debate whether (or, for that
21 matter, agree that) the petition should have been resolved in a different manner or that the issues
22 presented were ‘adequate to deserve encouragement to proceed further’.” Slack v. McDaniel, 529
23 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

24 In the present case, the Court finds that Petitioner has not made the required substantial
25 showing of the denial of a constitutional right to justify the issuance of a certificate of
26 appealability. Reasonable jurists would not find it debatable that Petitioner has failed to show an
27 entitlement to federal habeas corpus relief. Accordingly, the Court declines to issue a certificate
28 of appealability.

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UNITED STATES MAGISTRATE JUDGE