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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT DUANE FRANKLIN,

Petitioner,

v.

STU SHERMAN, Warden,

Respondent.

Case No. 1:14-cv-00729-SAB-HC

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT TO ENTER JUDGMENT AND CLOSE CASE

ORDER DIRECTING CLERK OF COURT TO SEND PETITIONER BLANK FORM FOR FILING A CIVIL RIGHTS ACTION

ORDER DECLINING ISSUANCE OF CERTIFICATE OF APPEALABILITY

On May 15, 2014, Petitioner filed a petition for writ of habeas corpus in this Court. He has consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

I.

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 Section 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

1 can show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). A
2 habeas corpus petition is the correct method for a prisoner to challenge the "legality or duration"
3 of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v.
4 Rodriguez, 411 U.S. 475, 485 (1973)); Advisory Committee Notes to Rule 1 of the Rules
5 Governing Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is
6 the proper method for a prisoner to challenge the conditions of that confinement. McCarthy v.
7 Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574;
8 Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

9 In this case, Petitioner claims he was called names by a correctional officer for filing a
10 grievance. He further claims his personal property was taken from him. Petitioner is
11 challenging the conditions of his confinement, not the fact or duration of that confinement.
12 Thus, Petitioner is not entitled to habeas corpus relief and this petition must be dismissed.
13 Should Petitioner wish to pursue his claims, he must do so by way of a civil rights complaint
14 pursuant to 42 U.S.C. § 1983.

15 II.

16 CERTIFICATE OF APPEALABILITY

17 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
18 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
19 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining
20 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

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

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

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

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

