

1 each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from
2 the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing
3 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court may only
4 grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of
5 the Constitution" 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a
6 prisoner to challenge the "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574
7 (9th Cir. 1991), quoting, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez v.
8 Galaza, 334 F.3d 850, 859 (9th Cir. 2003)("[H]abeas jurisdiction is absent, and a § 1983 action proper,
9 where a successful challenge to a prison condition will not necessarily shorten the prisoner's
10 sentence"); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

11 The Ninth Circuit has also held that "[h]abeas corpus jurisdiction also exists when a petitioner
12 seeks expungement of a disciplinary finding from his record if expungement is likely to accelerate the
13 prisoner's eligibility for parole." Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989); see also
14 Docken v. Chase, 393 F. 3d 1024, 1031 (9th Cir. 2004)("[W]e understand Bostic's use of the term
15 'likely' to identify claims with a sufficient nexus to the length of imprisonment so as to implicate, but
16 not fall squarely within, the 'core' challenges identified by the Preiser Court.")

17 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
18 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
19 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
20 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

21 In this case, as mentioned, Petitioner alleges that he was threatened and then assaulted by
22 another inmate and that prison officials failed to take adequate precautions to safeguard Petitioner and
23 prevent him from being assaulted. The petition candidly acknowledges that Petitioner is challenging
24 the conditions of his confinement. (Doc. 1, p. 3). In making such an acknowledgment, Petitioner, the
25 Court notes, is fully aware of the legal processes of this Court since he has, in the last several years,
26 filed no less than forty-two cases challenging conditions of confinement and at least twenty petitions
27 seeking habeas corpus relief. Based on Petitioner's experience with the legal system, the Court must
28 give some credence to Petitioner's own acknowledgement that he is challenging the conditions of his

1 confinement.

2 Accordingly, the Court concludes that Petitioner is challenging the conditions of his
3 confinement, not the fact or duration of that confinement. No relief which the Court could afford
4 based on the claims herein would affect the fact or duration of Petitioner's sentence. Therefore,
5 Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed. Should Petitioner
6 wish to pursue his claims, Petitioner must do so by way of a civil rights complaint pursuant to 42
7 U.S.C. § 1983.

8 Moreover, the Court declines to issue a certificate of appealability. A state prisoner seeking a
9 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and
10 an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336
11 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28
12 U.S.C. § 2253, which provides as follows:

- 13 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,
14 the final order shall be subject to review, on appeal, by the court of appeals for the circuit
15 in which the proceeding is held.
- 16 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a
17 warrant to remove to another district or place for commitment or trial a person charged
18 with a criminal offense against the United States, or to test the validity of such person's
19 detention pending removal proceedings.
- 20 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
21 be taken to the court of appeals from—
- 22 (A) the final order in a habeas corpus proceeding in which the detention
23 complained of arises out of process issued by a State court; or
- 24 (B) the final order in a proceeding under section 2255.
- 25 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made
26 a substantial showing of the denial of a constitutional right.
- 27 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or
28 issues satisfy the showing required by paragraph (2).

1 If a court denied a petitioner's petition, the court may only issue a certificate of appealability
2 when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §
3 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists could
4 debate whether (or, for that matter, agree that) the petition should have been resolved in a different
5 manner or that the issues presented were 'adequate to deserve encouragement to proceed further'."
6 Slack v. McDaniel, 529 U.S. 473, 484 (2000) (*quoting* Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

7 In the present case, the Court finds that Petitioner has not made the required substantial
8 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.
9 Reasonable jurists would not find the Court's determination that Petitioner is not entitled to federal
10 habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the
11 Court **DECLINES** to issue a certificate of appealability.

12 **ORDER**

13 Accordingly, the Court **HEREBY ORDERS** as follows:

- 14 1. The petition for writ of habeas corpus (Doc. 1), is **DISMISSED** for lack of subject
15 matter jurisdiction;
- 16 2. The Clerk of the Court is **DIRECTED** to enter judgment and close the file; and,
- 17 3. The Court **DECLINES** to issue a certificate of appealability.

18
19 **IT IS SO ORDERED.**

20 Dated: **August 26, 2014**

/s/ Jennifer L. Thurston
21 UNITED STATES MAGISTRATE JUDGE