

1 sentence. (Doc. 1, pp. 1-4). Rather, Petitioner contends that Respondent has shown “deliberate
2 indifference” to his “serous medical needs,” rising to the level of “elder abuse,” denial of his due
3 process rights, and “cruel and unusual punishment.” (Doc. 1, pp. 4-5). Petitioner then refers the Court
4 to Exhibit A for more specific allegations. Exhibit A is a compendium of various habeas corpus
5 petitions filed by Petitioner in the state courts over several years, medical reports regarding
6 Petitioner’s physical condition and treatment, and documents related to a Rules Violation Report
7 issued to Petitioner for his refusal to attend a previously scheduled medical appointment. (Doc. 1, Ex.
8 A). The RVR hearing resulted in Petitioner losing thirty days’ good time credit.

9 DISCUSSION

10 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of
11 each petition for writ of habeas corpus. The Court must dismiss a petition “[i]f it plainly appears from
12 the face of the petition . . . that the petitioner is not entitled to relief.” Rule 4 of the Rules Governing
13 2254 Cases; see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.1990). A federal court may only
14 grant a petition for writ of habeas corpus if the petitioner can show that “he is in custody in violation of
15 the Constitution” 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a
16 prisoner to challenge the “legality or duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574
17 (9th Cir. 1991), *quoting*, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827 (1973); Ramirez v.
18 Galaza, 334 F.3d 850, 859 (9th Cir. 2003)(“[H]abeas jurisdiction is absent, and a § 1983 action proper,
19 where a successful challenge to a prison condition will not necessarily shorten the prisoner’s
20 sentence”); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

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

27 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
28 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of

1 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
2 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

3 In this case, as mentioned, Petitioner alleges that he has been denied adequate medical
4 treatment at various times during his incarceration or, alternatively, that the medical treatment he has
5 received has been inadequate. Petitioner does not, however, challenge either the results of the
6 disciplinary hearing or any aspect of his conviction or sentence. Thus, it appears that Petitioner is
7 challenging the conditions of his confinement, not the fact or duration of that confinement. No relief
8 requested by Petitioner in his petition would affect the fact or duration of Petitioner's sentence.
9 Therefore, Petitioner is not entitled to habeas corpus relief, and this petition must be dismissed.
10 Should Petitioner wish to pursue his claims, Petitioner must do so by way of a civil rights complaint
11 pursuant to 42 U.S.C. § 1983.

12 Moreover, the Court declines to issue a certificate of appealability. A state prisoner seeking a
13 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and
14 an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336
15 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28
16 U.S.C. § 2253, which provides as follows:

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

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

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

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

ORDER

Accordingly, it is **HEREBY ORDERED** as follows:

1. The petition for writ of habeas corpus (Doc. 1), is **DISMISSED** for lack of jurisdiction;
2. The Clerk of the Court is **DIRECTED** to enter judgment and close the case; and,
3. The Court **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: **August 26, 2014**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE