

1 1, pp. 4-5). Petitioner then refers the Court to Exhibit A for more specific allegations. Exhibit A is a
2 compendium of various habeas corpus petitions filed by Petitioner in the state courts over several years,
3 medical reports regarding Petitioner's physical condition and treatment, and portions of Petitioner's
4 prison medical chronos. (Doc. 1, Ex. A). In his prior state habeas petitions, apparently incorporated by
5 reference into the instant petition, Petitioner contends that the denial of adequate medical services by
6 Respondent is racially based, violates his right to due process, and constitutes cruel and unusual
7 punishment. (Doc. 1, Ex. A, p. 12). Exhibit A also includes various complaints and requests by
8 Petitioner against Respondent for its failure to provide adequate medical accommodations in prison for
9 a variety of ailments, including, inter alia, limited mobility, seizures, impaired hearing, bipolar disorder.
10 (Doc. 1, Ex. A, p. 43).

11 DISCUSSION

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

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

1 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
2 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
3 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
4 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

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

13 **ORDER**

14 Accordingly, the Clerk of the Court is HEREBY DIRECTED to assign a United States District
15 Judge to this case.

16 **RECOMMENDATION**

17 Accordingly, the Court HEREBY RECOMMENDS that the habeas corpus petition be
18 DISMISSED for Petitioner’s failure to state any cognizable federal habeas claims.

19 This Findings and Recommendation 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. Within
22 twenty-one (21) 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).

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