

1 **DISCUSSION**

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

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

19 In contrast to a habeas corpus challenge to the length or duration of confinement, a civil rights
20 action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of
21 confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea,
22 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

23 In this case, as mentioned, Petitioner alleges that hospital staff have been negligent or have
24 actively conspired to permit other detainees to enter his room, resulting in an assault on Petitioner.
25 Although Petitioner does not expressly request any particular relief, he does not in his petition that
26 relief in the form of monetary damages and injunctive relief should be available to him. (Doc. 1, p. 4).
27 At no point in the petition does Petitioner challenge either the fact or duration of his incarceration as a
28 sexually violent predator.

1 Petitioner is thus challenging the conditions of his confinement, not the fact or duration of that
2 confinement. No relief requested by Petitioner in his petition would affect the fact or duration of
3 Petitioner's sentence. Therefore, Petitioner is not entitled to habeas corpus relief, and this petition
4 must be dismissed. Should Petitioner wish to pursue his claims, Petitioner must do so by way of a
5 civil rights complaint pursuant to 42 U.S.C. § 1983. Thus, the Court must dismiss this petition for lack
6 of jurisdiction.

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

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

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

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

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

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

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

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

28 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. §

1 2253(c)(2). To make a substantial showing, the petitioner must establish that “reasonable jurists could
2 debate whether (or, for that matter, agree that) the petition should have been resolved in a different
3 manner or that the issues presented were ‘adequate to deserve encouragement to proceed further’.”
4 Slack v. McDaniel, 529 U.S. 473, 484 (2000) (*quoting* Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

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

10 **ORDER**

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

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

16
17 **IT IS SO ORDERED.**

18 Dated: **November 5, 2014**

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