

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY LEON CLOWERS, JR.,
Petitioner,
v.
MARGARET MIMS,
Respondent.

) Case No.: 1:14-cv-01644-JLT
) FINDINGS AND RECOMMENDATION TO
) DISMISS PETITION FOR LACK OF
) JURISDICTION (Doc. 1)
) ORDER DIRECTING THAT OBJECTIONS BE
) FILED WITHIN TWENTY-ONE DAYS
) ORDER DIRECTING THAT THE CLERK OF
) COURT ASSIGN A DISTRICT JUDGE TO CASE
)

Petitioner is a county jail inmate proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The instant petition was filed on October 21, 2014. Petitioner is awaiting trial on state criminal charges and is currently being held in the Fresno County Jail. (Doc. 1). Petitioner alleges that he has been denied adequate medical treatment while being confined in the county jail. (*Id.*). However, Petitioner does not challenge the fact or duration of his present incarceration. Moreover, Petitioner does not allege that he has ever presented his claims to any state court.

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 face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing

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

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

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

19 In this case, as mentioned, Petitioner alleges that he was seen by medical staff when he
20 complained of problems in his pubic region. Petitioner further alleges that the medical employee
21 recommended immediate surgery; however, over a month has elapsed and Petitioner has not received
22 any further medical treatment. At no point in the petition does Petitioner challenge either the fact or
23 duration of his incarceration as he awaits trial on state criminal charges.

24 Petitioner is thus challenging the conditions of his confinement, not the fact or duration of that
25 confinement. No relief requested by Petitioner in his petition would affect the fact or duration of
26 Petitioner's sentence, which has yet to be imposed. Therefore, Petitioner is not entitled to habeas
27 corpus relief, and this petition must be dismissed. Should Petitioner wish to pursue his claims,
28 Petitioner must do so by way of a civil rights complaint pursuant to 42 U.S.C. § 1983. Thus, the Court

1 must dismiss this petition for lack of jurisdiction.

2 **ORDER**

3 Accordingly, the Clerk of the Court is DIRECTED to assign a United States District Judge to
4 this case.

5 **RECOMMENDATION**

6 For the foregoing reasons, the Court HEREBY RECOMMENDS that the petition for writ of
7 habeas corpus (Doc. 1), be DISMISSED for lack of habeas jurisdiction.

8 This Findings and Recommendation is submitted to the United States District Court Judge
9 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
10 Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one
11 (21) days after being served with a copy of this Findings and Recommendation, any party may file
12 written objections with the Court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendation." Replies to the Objections shall be
14 served and filed within ten court days (plus three days if served by mail) after service of the Objections.
15 The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The
16 parties are advised that failure to file objections within the specified time may waive the right to appeal
17 the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18
19 IT IS SO ORDERED.

20 Dated: November 5, 2014

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

23

24

25

26

27

28