

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

HOWARD YOUNG,	)	Case No.: 1:16-cv-01276-JLT (HC)
	)	
Petitioner,	)	ORDER DISMISSING SECOND AMENDED
	)	PETITION
v.	)	
	)	ORDER DIRECTING CLERK OF COURT TO
C. PFEIFFER, Warden,	)	ENTER JUDGMENT AND CLOSE CASE
	)	
Respondent.	)	ORDER DECLINING ISSUANCE OF
	)	CERTIFICATE OF APPEALABILITY
	)	

---

Petitioner filed a petition for writ of habeas corpus on August 29, 2016.<sup>1</sup> Following a preliminary review of the petition, the Court determined that Petitioner had failed to file a complete habeas petition. Therefore, on September 14, 2016, the Court issued an order directing Petitioner to submit a First Amended Petition. Petitioner filed a First Amended Petition on November 3, 2016. The Court screened the First Amended Petition and determined that it too failed to state a federal claim for relief. Therefore, on November 15, 2015, the Court dismissed the First Amended Petition and directed Petitioner to file a Second Amended Petition. On December 8, 2016, Petitioner filed the instant Second Amended Petition. Because the Second Amended Petition suffers from the same deficiencies identified in the prior petitions and Petitioner has had multiple opportunities to submit a

---

<sup>1</sup> Petitioner consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c) on September 12, 2016.

1 petition setting forth cognizable claims, the Second Amended Petition will be **DISMISSED** without  
2 leave to amend.

3 **I. PROCEDURAL GROUNDS FOR SUMMARY DISMISSAL**

4 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

5 If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled  
6 to relief in the district court, the judge must dismiss the petition and direct the clerk to notify  
the petitioner.

7 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ  
8 of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to  
9 dismiss, or after an answer to the petition has been filed. A petition for habeas corpus should not be  
10 dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were  
11 such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

12 **II. FAILURE TO STATE A CLAIM**

13 A federal court may only grant a petition for writ of habeas corpus if the petitioner can show  
14 that "he is in custody in violation of the Constitution . . . ." 28 U.S.C. § 2254(a). A habeas corpus  
15 petition is the correct method for a prisoner to challenge the "legality or duration" of his confinement.  
16 Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 485  
17 (1973)); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. In  
18 contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to  
19 challenge the conditions of that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42 (1991);  
20 Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules  
21 Governing Section 2254 Cases.

22 In addition, Rule 2 of the Rules Governing Section 2254 Cases provides that the petition:  
23 . . . shall specify all the grounds for relief which are available to the petitioner and of  
24 which he has or by the exercise of reasonable diligence should have knowledge and shall  
set forth in summary form the facts supporting each of the grounds thus specified.

25 Rule 2(c), Rules Governing Section 2254 Cases. Petitioner must also clearly state the relief  
26 sought in the petition. Id. Additionally, the Advisory Committee Notes to Rule 4 explains that  
27 "[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real  
28 possibility of constitutional error.'" Advisory Committee Notes to Rule 4; see Blackledge v. Allison,

1 431 U.S. 63, 75, n. 7, 97 S.Ct. 1621 (1977).

2 In his first claim for relief, Petitioner alleges the California Department of Corrections and  
3 Rehabilitation violated his due process rights under the Fifth, Sixth, and/or Fourteenth Amendments  
4 when he was denied parole consideration. Once again, Petitioner provides no supporting facts. As  
5 before, the claim is conclusory. Petitioner was previously advised that "[c]onclusory allegations  
6 which are not supported by a statement of specific facts do not warrant habeas relief." James v. Borg,  
7 24 F.3d 20, 29 (9th Cir. 1994). In addition, challenges to a parole suitability determination are  
8 foreclosed by the Supreme Court's decision in Swarthout v. Cooke, 562 U.S. 216 (2011).

9 In his second claim, Petitioner alleges that CDCR violated his right to be free from cruel and  
10 unusual punishment under the Eighth Amendment when it denied him access to rehabilitation  
11 programs including reentry programs and alternative custody programs such as transitional housing.  
12 As the Court stated before, Petitioner is challenging the conditions of his confinement, not the fact or  
13 duration of that confinement.<sup>2</sup> Thus, Petitioner is not entitled to habeas corpus relief, and the claim  
14 must be dismissed.

15 In his third claim for relief, Petitioner alleges he is being denied release and is now in unlawful  
16 custody in violation of the Fifth, Sixth and Fourteenth Amendments due to CDCR's failure to properly  
17 calculate his release date, eligibility for release, worktime credits, and classification points. Like his  
18 other claims, Petitioner offers no supporting facts. The claim is conclusory and must be dismissed.

19 In his fourth and final claim, Petitioner alleges a violation under the Fifth, Sixth, Eighth, and  
20 Fourteenth Amendments because he is being denied access to rehabilitation programs such as  
21 vocational, trade, and/or apprenticeship programs as well as access to state licensing. Again,  
22 Petitioner is challenging the conditions of confinement. The claim is not cognizable in a federal  
23 habeas action and must be dismissed.

24 Accordingly, the Second Amended Petition suffers from the same deficiencies identified in the  
25 two prior petitions. Because it is apparent Petitioner cannot set forth a viable claim for relief, the  
26

---

27  
28 <sup>2</sup> In addition, even if the Court treated this petition as one brought under 42 U.S.C. § 1983, it would have to dismiss the petition because he fails to provide sufficient factual detail to support the conditions of confinement claims and fails to name a defendant who is not entitled to the protections of the Eleventh Amendment.

1 petition will be dismissed without leave to amend. Jarvis v. Nelson, 440 F.2d 13, 14 (9<sup>th</sup> Cir. 1971).

2 **III. CERTIFICATE OF APPEALABILITY**

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

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

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

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

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

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

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

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

23 If a court denies a petitioner's petition, the court may only issue a certificate of appealability  
24 when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §  
25 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists could  
26 debate whether (or, for that matter, agree that) the petition should have been resolved in a different  
27 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)).

28 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

1 habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the  
2 Court DECLINES to issue a certificate of appealability.

3 **IV. ORDER**

4 Accordingly, the Court **ORDERS**:

- 5 1. The First Amended Petition is hereby DISMISSED without leave to amend;
- 6 2. The Clerk of Court is DIRECTED to enter judgment and close the case; and
- 7 3. The Court DECLINES to issue a certificate of appealability.

8  
9 IT IS SO ORDERED.

10 Dated: **December 13, 2016**

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