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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**MELVIN DUKES,**  
  
Petitioner,  
  
v.  
  
**WARDEN,**  
  
Respondent.

Case No. 1:16-cv-01325 MJS (HC)

**ORDER TO SHOW CAUSE WHY THE  
PETITION SHOULD NOT BE DISMISSED  
FOR FAILURE TO STATE A COGNIZABLE  
CLAIM**

[Doc. 1]

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus under the authority of 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on September 8, 2016. (Pet., ECF No. 1.), The court is unable to determine Petitioner’s crime of conviction due to the lack of legibility of his petition and an inability to understand his claims and factual assertions. (*Id.*) As best the Court can tell, Petitioner’s main assertion relates to a loss of property while incarcerated. (*Id.*) It does not appear that such claims implicate the fact or length of his detention.

**I. Discussion**

**A. Procedural Grounds for Summary Dismissal**

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

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

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

9 **B. Failure to State Cognizable Claim**

10 A federal court may only grant a petition for writ of habeas corpus if the petitioner  
11 can show that "he is in custody in violation of the Constitution . . . ." 28 U.S.C. §  
12 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the  
13 "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir.  
14 1991), quoting, Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee  
15 Notes to Rule 1 of the Rules Governing Section 2254 Cases.

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

20 Petitioner's claims are unclear. The petition is hardly legible, and the Court is  
21 unable to read large sections of it. In many places Petitioner has attempted to write two  
22 lines of text per each line of the petition. In addition to Petitioner's words being written  
23 too close together, to the extent the Court can read Petitioner's claims, it is difficult to  
24 determine what Petitioner is attempting to assert. It appears that Petitioner claims that  
25 correctional officers have taken action contrary to state laws and regulations, but it does  
26 not appear that Petitioner has alleged violations of federal law. Therefore, even if his  
27 claims implicate the fact or duration of his confinement, it does not appear that he has  
28 alleged a sufficient federal violation. A district court may entertain a petition for a writ of

1 habeas corpus by a state prisoner only on the ground that the custody is in violation of  
2 the Constitution, laws, or treaties of the United States. 28 U.S.C. §§ 2254(a), 2241(c)(3);  
3 Williams v. Taylor, 529 U.S. 362, 375 n.7, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000);  
4 Wilson v. Corcoran, 131 S. Ct. 13, 16, 178 L. Ed. 2d 276 (2010).

5 Federal habeas relief is not available to retry a state issue that does not rise to the  
6 level of a federal constitutional violation. Wilson v. Corcoran, 131 S.Ct. at 16 (2010);  
7 Estelle v. McGuire, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991).  
8 Alleged errors in the application of state law are not cognizable in federal habeas  
9 corpus. Souch v. Schaivo, 289 F.3d 616, 623 (9th Cir. 2002) (an ex post facto claim  
10 challenging state court's discretionary decision concerning application of state  
11 sentencing law presented only state law issues and was not cognizable in a proceeding  
12 pursuant to 28 U.S.C. § 2254); Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996).  
13 The Court accepts a state court's interpretation of state law. Langford, 110 F.3d at 1389.  
14 In a habeas corpus proceeding, this Court is bound by the California Supreme Court's  
15 interpretation of California law unless the interpretation is deemed untenable or a veiled  
16 attempt to avoid review of federal questions. Murtishaw v. Woodford, 255 F.3d 926, 964  
17 (9th Cir. 2001).

18 Given the inability to decipher Petitioner petition or to identify a federal basis for  
19 his claims, the Court cannot find that he has presented claims entitled to relief by way of  
20 a federal petition for writ of habeas corpus.

21 A petition for habeas corpus should not be dismissed without leave to amend  
22 unless it appears that no tenable claim for relief can be pleaded were such leave  
23 granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971). As it is possible that a federal  
24 claim could be stated, Petitioner is provided the opportunity to file an amended petition  
25 to attempt to state a cognizable claim.

## 26 **II. Order**

27 Petitioner is ORDERED TO SHOW CAUSE why the petition should not be  
28 dismissed for Petitioner's failure to state cognizable federal claims. Petitioner is

1 ORDERED to file an amended petition for writ of habeas corpus within thirty (30) days of  
2 the date of service of this order. The amended petition must be more legible than the  
3 original to enable the Court to evaluate its merits. Plaintiff must write more clearly, type  
4 the petition or have someone write it out for him.

5 Petitioner is forewarned that failure to follow this order will result in dismissal of  
6 the petition pursuant to Local Rule 110.

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8 IT IS SO ORDERED.

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Dated: September 20, 2016

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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