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

MELVIN DUKES,

v.

WARDEN,

Petitioner,

Respondent.

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

**FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS FOR FAILING TO
STATE COGNIZABLE CLAIM**

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT COURT JUDGE TO
THE PRESENT MATTER**

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.) Due to the marginal legibility of the petition, the Court was unable to determine Petitioner's crime of conviction or his claims and factual assertions. (*Id.*) However, it appeared that Petitioner's main assertion related to loss of property while incarcerated. (*Id.*) Thus, while Petitioner asserted that he was entitled to relief, it did not appear that his claims implicated the fact or length of his detention.

On September 21, 2016, the Court issued an order to show cause why the

1 petition should not be dismissed for failure to state a cognizable claim. (ECF No. 4.)
2 Over thirty days have passed, and Petitioner has not filed a response to the order to
3 show cause.

4 **I. Discussion**

5 **A. Procedural Grounds for Summary Dismissal**

6 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:
7 If it plainly appears from the petition and any attached exhibits that the
8 petitioner is not entitled to relief in the district court, the judge must dismiss
9 the petition and direct the clerk to notify the petitioner.

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

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

16 A federal court may only grant a petition for writ of habeas corpus if the petitioner
17 can show that "he is in custody in violation of the Constitution" 28 U.S.C. §
18 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the
19 "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir.
20 1991), quoting, Preiser v. Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee
21 Notes to Rule 1 of the Rules Governing Section 2254 Cases.

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

26 A district court may entertain a petition for a writ of habeas corpus by a state
27 prisoner only on the ground that the custody is in violation of the Constitution, laws, or
28 treaties of the United States. 28 U.S.C. §§ 2254(a), 2241(c)(3); Williams v. Taylor, 529

1 U.S. 362, 375 n.7, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000); Wilson v. Corcoran, 131
2 S. Ct. 13, 16, 178 L. Ed. 2d 276 (2010).

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

16 In this case, Petitioner's claims are unclear. The petition is barely legible, but it
17 appears that Petitioner feels correctional officers have taken action contrary to state laws
18 and regulations; no alleged violation of federal law appears. Therefore, even if his claims
19 implicate the fact or duration of his confinement, it does not appear that he has alleged a
20 sufficient federal violation.

21 Given the petition's lack of legibility and the failure to allege a federal basis for any
22 claims, the Court concludes Petitioner has not presented claims entitled to relief by way
23 of a federal petition for writ of habeas corpus.

24 **II. Recommendation**

25 Accordingly, it is hereby recommended that the petition for a writ of habeas
26 corpus be DISMISSED. The Court orders the Clerk of Court to assign a district court
27 judge to the instant matter.

28 This Findings and Recommendation is submitted to the assigned District Judge,

1 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
2 being served with the Findings and Recommendation, any party may file written
3 objections with the Court and serve a copy on all parties. Such a document should be
4 captioned "Objections to Magistrate Judge's Findings and Recommendation." Any reply
5 to the objections shall be served and filed within fourteen (14) days after service of the
6 objections. The parties are advised that failure to file objections within the specified time
7 may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d
8 834, 839 (9th Cir. 2014).

9
10 IT IS SO ORDERED.

11 Dated: November 18, 2016

/s/ Michael J. Seng
12 UNITED STATES MAGISTRATE JUDGE
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