

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PETER T. EDELBACHER,

Petitioner,

V.

CALIFORNIA BOARD OF PAROLE HEARINGS,

Respondent.

Case No. 1:17-cv-00636-AWI-SAB-HC

FINDINGS AND RECOMMENDATION TO
CONVERT PETITION FOR WRIT OF
HABEAS CORPUS TO CIVIL RIGHTS
ACTION UNDER 42 U.S.C. § 1983

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I.

BACKGROUND

Petitioner is currently in the custody of the California Department of Corrections and Rehabilitation. On January 10, 2017, Petitioner filed the instant petition for writ of habeas corpus in the United States District Court for the Northern District of California. (ECF No. 1). On May 4, 2017, the petition was transferred to this Court. (ECF No. 9). In the petition, Petitioner is challenging the Board of Parole Hearings (“Board”) denying him consideration for release under the Elder Parole Program. (ECF No. 1 at 5).¹

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

II.

DISCUSSION

3 Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a
4 habeas petition and allows a district court to dismiss a petition before the respondent is ordered
5 to file a response if it “plainly appears from the petition and any attached exhibits that the
6 petitioner is not entitled to relief in the district court.”

A. Federal Habeas Jurisdiction

8 By statute, federal courts “shall entertain an application for a writ of habeas corpus in
9 behalf of a person in custody pursuant to the judgment of a State court only on the ground that he
10 is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
11 § 2254(a). A claim falls within the “core of habeas corpus” when a prisoner challenges “the fact
12 or duration of his confinement” and “seeks either immediate release from that confinement or the
13 shortening of its duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). The Ninth Circuit
14 has adopted a rule that a “state prisoner’s claim [that] does not lie at ‘the core of habeas corpus’
15 . . . must be brought, ‘if at all,’ under § 1983.” Nettles v. Grounds, 830 F.3d 922, 934 (9th Cir.
16 2016) (en banc) (quoting Preiser, 411 U.S. at 487; Skinner v. Switzer, 562 U.S. 521, 535 n.13
17 (2011)). Therefore, if “success on [Petitioner]’s claims would not necessarily lead to his
18 immediate or earlier release from confinement, [Petitioner]’s claim does not fall within ‘the core
19 of habeas corpus,’ and he must instead bring his claim under § 1983.” Nettles, 830 F.3d at 935
20 (quoting Skinner, 562 U.S. at 535 n.13).

21 Here, Petitioner asserts that the Board improperly denied Petitioner consideration for
22 release under the Elder Parole Program and appears to be seeking a court order for the Board to
23 schedule and hold a parole suitability hearing. (ECF No. 1 at 5, 19). However, success on
24 Petitioner’s claim would not necessarily lead to his immediate or earlier release from
25 confinement. See Nettles, 830 F.3d at 935 (noting that under California law, the parole board
26 must consider all relevant reliable information in determining suitability for parole and has the
27 authority to deny parole on the basis of any grounds presently available to it). Based on the
28 foregoing, Petitioner’s claim is not cognizable in federal habeas corpus.

B. Conversion to § 1983 Civil Rights Action

2 Petitioner may convert his petition to a civil rights action under 42 U.S.C. § 1983. See
3 Nettles, 830 F.3d at 936 (“If the complaint is amenable to conversion on its face, meaning that it
4 names the correct defendants and seeks the correct relief, the court may recharacterize the
5 petition so long as it warns the pro se litigant of the consequences of the conversion and provides
6 an opportunity for the litigant to withdraw or amend his or her complaint.”) (quoting Glaus v.
7 Anderson, 408 F.3d 382, 388 (7th Cir. 2005)). The Court notes, however, that habeas corpus and
8 prisoner civil rights actions differ in a variety of respects, such as the proper defendants, filing
9 fees, exhaustion requirements, and restrictions on future filings (e.g., the Prison Litigation
10 Reform Act’s three-strikes rule). Nettles, 830 F.3d at 936 (citing Robinson v. Sherrod, 631 F.3d
11 839, 841 (7th Cir. 2011); Glaus, 408 F.3d at 388).

12 If Petitioner chooses to convert the instant matter to a civil rights action, the filing fee for
13 § 1983 civil rights cases is \$350. Petitioner is required to pay the full amount by way of
14 deductions from income to Petitioner's trust account, even if granted in forma pauperis status.
15 See 28 U.S.C. § 1915(b)(1).²

16 Petitioner also may, at his option, voluntarily dismiss his habeas petition without
17 prejudice to refiling his claims as a § 1983 civil rights action. However, Petitioner is forewarned
18 that dismissal and refiling may subject Petitioner to a possible statute of limitations bar as well as
19 other complications as set forth above.

III.

RECOMMENDATION

22 Accordingly, IT IS HEREBY RECOMMENDED that the petition for writ of habeas
23 corpus be converted to a civil rights action under 42 U.S.C. § 1983 after obtaining consent from
24 Petitioner.

25 This Findings and Recommendation is submitted to the United States District Court
26 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
27 of the Local Rules of Practice for the United States District Court, Eastern District of California.

²⁸ The Court notes that Petitioner has not been authorized to proceed in forma pauperis in this case.

1 Within **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may
2 file written objections with the Court and serve a copy on all parties. Such a document should be
3 captioned "Objections to Magistrate Judge's Findings and Recommendation." The assigned
4 District Judge will then review the Magistrate Judge's ruling pursuant to 28 U.S.C.
5 § 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may
6 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
7 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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9 IT IS SO ORDERED.

10 Dated: June 5, 2017


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UNITED STATES MAGISTRATE JUDGE