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

JAMES D. CHAVEZ,)	Case No.: 1:17-cv-01044-JLT (HC)
)	
Petitioner,)	ORDER DISMISSING FIRST AMENDED
)	PETITION AND TERMINATING OUTSTANDING
v.)	MOTIONS
)	(Docs. 5, 8, 9)
WARDEN,)	
)	ORDER DIRECTING CLERK OF COURT TO
Respondent.)	ENTER JUDGMENT AND CLOSE CASE
)	
)	NO CERTIFICATE OF APPEALABILITY
)	REQUIRED
)	
)	

Petitioner filed a federal habeas petition in this Court on August 3, 2017, challenging a disciplinary hearing. After conducting a preliminary screening of the petition, the Court found that the petitioner failed to present any cognizable grounds for relief and failed to demonstrate exhaustion. Therefore, the Court dismissed the petition with leave to file an amended petition. On September 11, 2017, Petitioner filed a First Amended Petition. (Doc. 5.) He also filed a motion to proceed in forma pauperis and a motion to appoint counsel. The Court finds the amended petition suffers from the same deficiencies and will therefore **DISMISS** the petition.

///

1 **I. DISCUSSION**

2 A. Preliminary Review of Petition

3 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary
4 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it
5 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
6 the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory
7 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,
8 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
9 answer to the petition has been filed.

10 B. Failure to State a Cognizable Federal Claim

11 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

12 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain
13 an application for a writ of habeas corpus in behalf of a person in custody pursuant to a
14 judgment of a State court *only on the ground that he is in custody in violation of the
Constitution or laws or treaties of the United States.*

15 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States
16 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
17 person in custody upon the legality of that custody” Preiser v. Rodriguez, 411 U.S. 475, 484
18 (1973).

19 In order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that
20 the adjudication of his claim in state court

21 (1) resulted in a decision that was contrary to, or involved an unreasonable application
22 of, clearly established Federal law, as determined by the Supreme Court of the United
23 States; or (2) resulted in a decision that was based on an unreasonable determination of
the facts in light of the evidence presented in the State court proceeding.

24 28 U.S.C. § 2254(d)(1),(2).

25 In addition to the above, Rule 2(c) of the Rules Governing Section 2254 Cases requires that the
26 petition:

- 27 (1) Specify all the grounds for relief available to the petitioner;
28 (2) State the facts supporting each ground;
(3) State the relief requested;

- 1 (4) Be printed, typewritten, or legibly handwritten; and
2 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it for
the petitioner under 28 U.S.C. § 2242.

3 In this case, Petitioner complains that he was found guilty of a CDCR-115 Rules Violation for
4 “manipulation of staff.” (Doc. 6 at 4.) He claims he was “unfairly accused and found guilty” “based
5 purely on false evidence.” (Doc. 6 at 4.) He states the report notes he went to suicide watch to avoid a
6 115 but he was genuinely feeling suicidal. He asks that the 115 be expunged from his file.

7 Based on these statements and the rest of the petition, the Court finds that Petitioner fails to
8 state a cognizable claim. Petitioner’s sole claim is entirely conclusory. He provides no supporting
9 facts, nor does he allege how the state court’s decision was contrary to, or involved an unreasonable
10 application of, clearly established Federal law, or resulted in a decision that was based on an
11 unreasonable determination of the facts. He disagrees with the guilty finding, but this is not a proper
12 claim for relief as it is not the function of a federal habeas court to reassess and reweigh the evidence.
13 Cullen v. Pinholster, 563 U.S. 170, 181 (2011). Essentially, he asks the Court to credit his version of
14 the facts rather than the facts as determined by the hearing officer. This is beyond the scope of habeas
15 review.” Jackson v. Virginia, 443 U.S. 307, 319 (1979) (Supreme Court held it is not the function of a
16 federal habeas court “to reweigh the evidence and view it in the light most favorable to the defense.”).

17 Moreover, Petitioner’s assertion that the Rules Violation Report affects the length or duration
18 of his sentence is completely speculative. He contends that a parole board might consider it at his next
19 parole hearing in 2021. (Doc. 6 at 5.) He argues that disciplinary infractions pose hardships because
20 they “can cause some to be denied several years before the next hearing.” (Doc. 6 at 5.) This
21 argument is speculative and insufficient to confer habeas jurisdiction. “Because success on [his]
22 claims would not necessarily lead to his immediate or earlier release from confinement, [his] claim
23 does not fall within ‘the core of habeas corpus.’” Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir.
24 2016) (quoting Skinner v. Switzer, 562 U.S. 521, 535 n. 13 (2011)). Thus, the petition must be
25 dismissed.

26 C. Failure to Exhaust State Remedies

27 A petitioner who is in state custody proceeding with a petition for writ of habeas corpus must
28 exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity

1 to the state court and gives the state court the initial opportunity to correct the state's alleged
2 constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455
3 U.S. 509, 518 (1982).

4 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a
5 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.
6 Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full
7 and fair opportunity to hear a claim if the petitioner has presented the highest state court with the
8 claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504
9 U.S. 1 (1992) (factual basis).

10 Additionally, the petitioner must have specifically told the state court that he was raising a
11 federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme
12 Court reiterated the rule as follows:

13 In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state
14 remedies requires that petitioners “fairly presen[t]” federal claims to the state courts in
15 order to give the State the “opportunity to pass upon and correct alleged violations of
16 the prisoners' federal rights” (some internal quotation marks omitted). If state courts
17 are to be given the opportunity to correct alleged violations of prisoners' federal rights,
they must surely be alerted to the fact that the prisoners are asserting claims under the
United States Constitution. If a habeas petitioner wishes to claim that an evidentiary
ruling at a state court trial denied him the due process of law guaranteed by the
Fourteenth Amendment, he must say so, not only in federal court, but in state court.

18 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

19 Our rule is that a state prisoner has not “fairly presented” (and thus exhausted) his
20 federal claims in state court unless he specifically indicated to that court that those
21 claims were based on federal law. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th
22 Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held that the
23 petitioner must make the federal basis of the claim explicit either by citing federal law
24 or the decisions of federal courts, even if the federal basis is “self-evident,” Gatlin v.
Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 .
. . (1982), or the underlying claim would be decided under state law on the same
considerations that would control resolution of the claim on federal grounds. Hiiivala v.
Wood, 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31
(9th Cir. 1996);

25 In Johnson, we explained that the petitioner must alert the state court to the fact that the
26 relevant claim is a federal one without regard to how similar the state and federal
27 standards for reviewing the claim may be or how obvious the violation of federal law
is.

28 Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000), *as amended by* Lyons v. Crawford, 247

1 F.3d 904, 904-5 (9th Cir. 2001).

2 In this case, it appears that Petitioner has failed to present any of his claims to the state courts.
3 His failure to first seek relief in the state courts requires dismissal of the action. 28 U.S.C. § 2254(b).

4 **II. CERTIFICATE OF APPEALABILITY**

5 28 U.S.C. Section 2253(c)(1) provides the following:

6 Unless a circuit justice or judge issues a certificate of appealability, an appeal may not
7 be taken to the court of appeals from-

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

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

10 28 U.S.C. § 2253(c)(1).

11 In this case, the detention complained of does not arise out of process issued by a state court,
12 since Petitioner has not yet presented his claims to any state court; nor is this a section 2255
13 proceeding. Thus, the plain language of 28 U.S.C. § 2253(c)(1) does not require a certificate of
14 appealability. Forde v. U.S. Parole Commission, 114 F.3d 878 (9th Cir. 1997).

15 **III. ORDER**

16 Accordingly, the Court **ORDERS**:

- 17 1) The Petition for Writ of Habeas Corpus is **DISMISSED** for failure to state a claim and for
18 failure to exhaust state remedies;
- 19 2) The Clerk of Court is **DIRECTED** to terminate the outstanding motions (Docs. 8, 9);
- 20 3) The Clerk of Court is **DIRECTED** to enter judgment and close the case; and
- 21 4) No certificate of appealability is required.

22
23 IT IS SO ORDERED.

24 Dated: September 13, 2017

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