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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KAREEM BROWN,

Petitioner,

v.

WARREN MONTGOMERY,

Respondent.

Case No. 1:17-cv-01584- EPG-HC

ORDER TO SHOW CAUSE

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a prison disciplinary proceeding in which he was found guilty of destruction of state property. (ECF No. 1).

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

By statute, federal courts “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the 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.” 28 U.S.C. § 2254(a). A claim falls within the “core of habeas corpus” when a prisoner challenges “the fact or duration of his confinement” and “seeks either immediate release from that confinement or the

1 shortening of its duration.” Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). The Ninth Circuit
2 recently adopted a rule that a “state prisoner’s claim [that] does not lie at ‘the core of habeas
3 corpus’ . . . must be brought, ‘if at all,’ under § 1983.” Nettles v. Grounds, 830 F.3d 922, 934
4 (9th Cir. 2016) (en banc) (quoting Preiser, 411 U.S. at 487; Skinner v. Switzer, 562 U.S. 521,
5 535 n.13 (2011)). Therefore, if “success on [Petitioner]’s claims would not necessarily lead to his
6 immediate or earlier release from confinement, [Petitioner]’s claim does not fall within ‘the core
7 of habeas corpus,’ and he must instead bring his claim under § 1983.” Nettles, 830 F.3d at 935
8 (quoting Skinner, 562 U.S at 535 n.13).

9 In the instant petition, Petitioner challenges a prison disciplinary proceeding in which he
10 was found guilty of destruction of state property (i.e., legal volumes) and was required to pay
11 \$3,276.09, the cost of replacing the destroyed volumes. (ECF No. 1 at 4–5).¹ Petitioner does not
12 allege that the disciplinary violation resulted in the loss of credits, and it appears that Petitioner
13 may be serving a life sentence. (ECF No. 1 at 1). Therefore, success on Petitioner’s challenge to
14 the disciplinary proceeding would not necessarily lead to immediate or earlier release from
15 custody.

16 Accordingly, within THIRTY (30) DAYS from the date of service of this order,
17 Petitioner shall show cause why the Court should not dismiss this petition for lack of habeas
18 jurisdiction pursuant to Nettles.

19 Petitioner is forewarned that failure to follow this order may result in dismissal of the
20 petition pursuant to Federal Rule of Civil Procedure 41(b) (a petitioner’s failure to prosecute or
21 to comply with a court order may result in a dismissal of the action).

22
23 IT IS SO ORDERED.

24 Dated: December 4, 2017

25 /s/ Eric P. Gray
26 UNITED STATES MAGISTRATE JUDGE

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