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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. GRADFORD,
Petitioner,
v.
MULE CREEK STATE PRISON,
Respondent.

No. 1:18-cv-00279-SKO HC

**FINDINGS AND RECOMMENDATION
THAT THE COURT DISMISS
THE PETITION FOR FAILURE
TO STATE A CLAIM COGNIZABLE
IN HABEAS CORPUS**

**COURT CLERK TO ASSIGN DISTRICT
JUDGE**

(Doc. 1)

Screening Order

Petitioner, William J. Gradford, is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner contends that he is being retaliated against at Mule Creek State Prison for expressing his First Amendment Rights.

1 **I. Preliminary Screening**

2 Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary
3 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it
4 plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the
5 Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).
6 A petition for writ of 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 to be granted. *Jarvis v.*
8 *Nelson*, 440 F.2d 13, 14 (9th Cir. 1971).

9
10 **II. Petition States a Claim Properly Addressed in Proceedings Under § 1983**

11 "Habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or
12 duration of his confinement and seeks immediate or speedier release, even though such a claim
13 may come within the literal terms of § 1983." *Preiser v. Rodriguez*, 411 U.S. 475, 488-89 (1973).
14 A federal petition for writ of habeas corpus concerns whether a petitioner is in custody in
15 violation of the Constitution. 28 U.S.C. § 2254(a). Challenges to the conditions of prison life are
16 properly brought under 42 U.S.C. § 1983. *McCarthy v. Bronson*, 500 U.S. 136, 142 (1991). A
17 plaintiff may not seek both types of relief in a single action. *See Heck v. Humphrey*, 512 U.S.
18 477, 487-88 (1994); *Preiser*, 411 U.S. at 498-99 n. 15; *Young v. Kenny*, 907 F.2d 874 (9th Cir.
19 1990), *cert. denied sub nom Bressman v. Farrier*, 498 U.S. 1126 (1991); *Advisory Committee*
20 *Notes to Rule 1 of the Rules Governing Section 2254 Cases*.

21
22
23 Petitioner seeks redress for alleged violations of his First Amendment Rights due to
24 retaliation he faces in prison. This claim is in the nature of a civil rights claim pursuant to 42
25 U.S.C. § 1983, as the claim does not concern the fact or duration of petitioner's confinement.

1 Because Petitioner is not entitled to habeas corpus relief, the Court must dismiss his
2 habeas corpus petition. Petitioner may pursue his claims by filing a civil rights complaint
3 pursuant to 42 U.S.C. § 1983.

4 **III. Certificate of Appealability**

5 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
7 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
8 certificate of appealability is 28 U.S.C. § 2253, which provides:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255
10 before a district judge, the final order shall be subject to review, on appeal, by
11 the court of appeals for the circuit in which the proceeding is held.

12 (b) There shall be no right of appeal from a final order in a proceeding
13 to test the validity of a warrant to remove to another district or place for
14 commitment or trial a person charged with a criminal offense against the
15 United States, or to test the validity of such person's detention pending
removal proceedings.

16 (c) (1) Unless a circuit justice or judge issues a certificate of
17 appealability, an appeal may not be taken to the court of appeals from—

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

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

20 (2) A certificate of appealability may issue under paragraph (1)
21 only if the applicant has made a substantial showing of the denial of a
22 constitutional right.

23 (3) The certificate of appealability under paragraph (1) shall
24 indicate which specific issues or issues satisfy the showing required by
paragraph (2).

25 If a court denies a habeas petition, the court may only issue a certificate of appealability
26 "if jurists of reason could disagree with the district court's resolution of his constitutional claims
27 or that jurists could conclude the issues presented are adequate to deserve encouragement to
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1 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
2 Although the petitioner is not required to prove the merits of his case, he must demonstrate
3 "something more than the absence of frivolity or the existence of mere good faith on his . . .
4 part." *Miller-El*, 537 U.S. at 338.

5
6 Reasonable jurists would not find the Court's determination that Petitioner is not entitled
7 to pursue federal habeas corpus relief to be debatable or wrong, or conclude that the issues
8 presented required further adjudication. Accordingly, the Court recommends declining to issue a
9 certificate of appealability.

10 **IV. Conclusion and Recommendation**

11 The undersigned recommends that the Court (1) dismiss the petition for writ of habeas
12 corpus since it does not allege grounds that would entitle Petitioner to habeas corpus relief, and
13 (2) decline to issue a certificate of appealability.

14
15 These Findings and Recommendations will be submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**
17 **(30) days** after being served with these Findings and Recommendations, either party may file
18 written objections with the Court. The document should be captioned "Objections to Magistrate
19 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and
20 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure
21 to file objections within the specified time may constitute waiver of the right to appeal the District
22 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*,
23 923 F.2d 1391, 1394 (9th Cir. 1991)).

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25 The Court Clerk is hereby directed to assign a district judge to this action.

26 IT IS SO ORDERED.

27 Dated: March 1, 2018

/s/ Sheila K. Oberto

UNITED STATES MAGISTRATE JUDGE

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