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

GARY SMITH,

Plaintiff,

No. CIV S-07-1008 DFL DAD P

vs.

PEOPLE OF THE STATE OF  
CALIFORNIA, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se. On May 29, 2007, plaintiff filed a civil rights complaint pursuant to 42 U.S.C. § 1983. However, in the statement of claim set out in his complaint, plaintiff contends that he was erroneously convicted of an assault and that his judgment of conviction was affirmed on appeal on March 19, 2007. Plaintiff requests the following relief: “Review the facts and file a writ of habeas [sic] corpus. I want justice. 18 yrs for a crime that carried 3-4- [illegible].” (Compl. at 5.)

When a prisoner challenges the fact or duration of his custody and a determination of his action may result in plaintiff's entitlement to an earlier release, his sole federal remedy is a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir. 1990). The proper mechanism for raising a federal challenge to conditions of

1 confinement is through a civil rights action pursuant to 42 U.S.C. § 1983. Badea v. Cox, 931  
2 F.2d 573, 574 (9th Cir. 1991). Here, it appears that plaintiff seeks to challenge his state court  
3 conviction. Therefore, the court will provide plaintiff with the form petition for a writ of habeas  
4 corpus and order plaintiff to file it with this court. Plaintiff is advised that the exhaustion of state  
5 court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C.  
6 § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state  
7 court with a full and fair opportunity to consider all claims before presenting them to the federal  
8 court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086  
9 (9th Cir. 1986).

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. Plaintiff's complaint is dismissed;

12 2. Plaintiff is granted thirty days from the date of service of this order to file a  
13 petition for a writ of habeas corpus that complies with the requirements of the Federal Rules of  
14 Civil Procedure; plaintiff must use the form provided by the court and must answer each question  
15 on the form without reference to an attachment; the petition must bear the docket number  
16 assigned this case; plaintiff's failure to file his petition in accordance with this order will result in  
17 the dismissal of this action; and

18 3. The Clerk of the Court is directed to provide plaintiff with the court's form  
19 petition for a writ of habeas corpus by a state prisoner.

20 DATED: June 15, 2007.

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24 DALE A. DROZD  
25 UNITED STATES MAGISTRATE JUDGE  
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DAD:4  
smit1008.amd