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

RICHARD JOSEPH CRANE,

Petitioner,

No. CIV S-09-1511 DAD P

vs.

MIKE McDONALD,

Respondent.

ORDER

_____/

Petitioner is a state prisoner proceeding pro se and in forma pauperis with an amended petition for a writ of habeas corpus pursuant to 42 U.S.C. § 2254. Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face and any exhibits annexed to it that the petitioner is not entitled to relief in the district court[.]” See also Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001) (district court has the authority to dismiss a habeas petition on statute of limitations grounds prior to the state responding to the petition). Here, upon reviewing the pending petition the court finds that several of the grounds for relief stated by petitioner therein are not cognizable in a federal habeas action and that other grounds upon which petitioner apparently seeks habeas relief require further clarification. Therefore, the court will dismiss the amended petition and grant petitioner leave to file a second amended petition. The court will address each of petitioner’s claims below.

1 I. Ground One:

2 Prison officials violated petitioner’s 8th Amendment right to
3 safety, during segregation process denied due process violating
4 14th Amendment

5 (Am. Petition (Doc. No. 9) at 4.¹) Petitioner explains in his memorandum of points and
6 authorities in support of his habeas petition, that he requested protective custody because he felt
7 threatened and that on October 18, 2001, he was placed in administrative segregation where he
8 remained until August 24, 2002. (Mem. P&A (Doc. No. 10) at 4.) Petitioner argues that
9 officials have “violated petitioner’s Eighth Amendment right to be free from fear of imminent
10 death and forced petitioner into administrative segregation to avoid death without due process
11 protections” (Id.)

12 Petitioner is advised that this claim appears to challenge the conditions of his
13 confinement and may not be properly raised in this habeas action. The proper mechanism for
14 raising such a claim is through a civil rights action brought pursuant to 42 U.S.C. § 1983. Badea
15 v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). Therefore, petitioner should not present this claim in
16 any second amended habeas petition he elects to file.

17 II. Ground Two

18 Petitioner retaliated against on date transferred to federal court, and
19 denied due process, liberty interest, First and 14th Amendment

20 (Am. Petition at 4.) With respect to this ground for relief, petitioner alleges that on November
21 22, 2005, he was issued a rules violation report in retaliation for the filing of a civil rights action
22 he was pursuing in Crane v. Wheeler, Case No. CIV S-03-2443 GEB DAD P.² Again this claim

23 ¹ All citations are to the page numbers as they appear in the court’s electronic filing
24 system.

25 ² This civil rights action proceeded to jury trial. On December 2, 2005, the jury returned
26 a verdict in favor of defendant Wheeler on plaintiff’s free exercise of religion and access to
courts claims. On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed the judgment
ruling that the district court had properly granted summary judgment for defendants on Crane’s

1 is not properly presented in a federal habeas action. Rather, petitioner must pursue any
2 retaliation claim by way of a civil rights action. See Mt. Healthy City Bd. of Educ. v. Doyle, 429
3 U.S. 274, 283-84 (1977) (holding that retaliation by a state actor for a prisoner's exercise of a
4 constitutional right is actionable under § 1983). To the extent that petitioner is challenging the
5 2005 rules violation report issued against him, the court takes judicial notice of the fact that
6 petitioner is already pursuing a habeas action in this court challenge that prison disciplinary
7 conviction in the case of Crane v. McDonald, CIV S-09-0852 FCD EFB P.³ Therefore, in any
8 second amended habeas petition he elects to file in this case, petitioner should not present any
9 claim challenging his 2005 rules violation report.

10 III. Ground Three

11 Petitioner has been denied substantive due process in opportunity
12 to meet parole requirements due to involuntary administrative
 segregation

13 (Am. Petition at 5.) In support of this claim for habeas relief, petitioner refers to specific pages
14 of his memorandum of points and authorities. However, the allegations set forth therein fail to
15 provide support for this claim for relief. Instead, the allegations to which petitioner refers
16 concern assaults he has allegedly suffered at the hands of other inmates.

17 In any second amended habeas petition he elects to file, petitioner must identify
18 the specific parole suitability hearing he is challenging and explain what findings or
19 recommendations were made at that parole hearing which supports his claim of entitlement to
20 federal habeas relief. Petitioner must also explain how any claimed constitutional error in this
21 regard impacts the duration of his confinement.

22 _____
23 claim that disciplinary proceedings violation his due process rights. The Ninth Circuit also found
24 that the district court did not abuse its discretion with respect to evidentiary rulings made during
the trial.

25 ³ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,
26 803 F.2d 500, 504 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir.
1980).

1 IV. Ground Four

2 Petitioner is being held in solitary confinement without due process
3 and some evidence in violation of Fourteenth Amendment

4 (Am. Petition at 5.) In support of this ground for relief petitioner again refers to specific pages of
5 his memorandum of points and authorities. However, the pages referred to by petitioner do not
6 provide support for this claim. Rather, the allegations referred to by petitioner with respect to
7 this stated ground for habeas relief concern petitioner’s allegations that he has been subjected to
8 limited access to outdoor exercise, the lengthy periods of lockdown, “inhuman conditions,” and
9 retaliation. (Mem. P&A at 19-21.) Again, these allegations concern the conditions of
10 petitioner’s confinement and are not appropriately raised in a petition seeking federal habeas
11 relief. Therefore, this ground for relief should not be raised in any second amended petition
12 petitioner elects to file.

13 V. Ground Five

14 The continued deprivation of liberty interests and due process are
15 capable of repetition yet evading review

16 (Am. Petition at 6.) In support of this claim petitioner argues that his grounds for relief are not
17 moot and refers to the decision in Rosenkrantz v. Marshall, 444 F. Supp. 2d 1063, 1076 n. 9
18 (C.D. Cal. 2006) (holding that the petitioner’s subsequent parole hearing did not render his
19 habeas petition challenging a prior parole hearing moot). (Mem. P&A at 36.) This bare assertion
20 by petitioner does not provide any valid basis for the granting of federal habeas relief. Rather, it
21 is merely a legal argument which would be relevant only if petitioner were seeking habeas relief
22 with respect to a specific parole denial and respondent advanced the argument that the petition
23 was moot. Again, if petitioner is attempting to challenge a denial of release on parole in this
24 federal habeas action, in any second amended petition he elects to file he must identify the
25 specific parole suitability hearing he is challenging and explain what findings or
26 recommendations were made at that parole hearing which supports his claim of entitlement to

1 federal habeas relief. He must also explain how any claimed constitutional error in this regard
2 impacts the duration of his confinement. As presented, this claim should not be presented in any
3 second amended petition.

4 VI. Ground Six

5 California Department of Corrections have imposed a lockdown
6 program depriving petitioner of access to trades and education
7 classes, and therapy [sic] programs required by the Board of Parole
8 Hearings for parole

8 (Am. Petition at 6.) In connection with this stated grounds for habeas relief, petitioner contends
9 that he is being denied access to “prison activities necessary to meet BPH orders for petitioner to
10 become eligible for parole, and because he is protective custody, subjected him to discriminatory
11 treatment in violation of the Fourteenth Amendment.” (Id.) Again, if petitioner is attempting to
12 challenge a denial of release on parole in this federal habeas action, in any second amended
13 petition he elects to file he must identify the specific parole suitability hearing he is challenging
14 and explain what findings or recommendations were made at that parole hearing which supports
15 his claim of entitlement to federal habeas relief. Specifically, if he wishes to pursue this aspect
16 of a claim challenging an adverse parole decision, petitioner should also clarify what programs
17 are offered at his institution of confinement, why he was denied access to those programs and
18 how his inability to participate in the educational and therapy programs resulted in the decision to
19 deny him parole.

20 VII. Ground Seven

21 California Department of Corrections have and are subjecting
22 petitioner to cruel and unusual punishment in violation of the
23 Eighth Amendment

23 (Am. Petition at 6.) In support of this ground for relief, petitioner argues that denying him
24 outdoor exercise violates the Eighth Amendment. Again, this claim presents a challenge to
25 petitioner’s conditions of his confinement. As noted above, such a claim does not provide the
26 basis for the granting of habeas relief and must instead be raised in a civil rights action.

1 Accordingly, petitioner should not include this claim in any second amended habeas petition he
2 elects to file in this action.

3 VIII. Miscellaneous Habeas Requirements

4 If petitioner is seeking to challenge an adverse parole decision in this federal
5 habeas action, he is advised that he may challenge only one parole hearing in this case.
6 “[Petitioner] may not challenge several different decisions in a single petition; he must challenge
7 one decision per habeas petition. . . . Separate petitions are required because exhaustion, venue,
8 procedural default issues, statute of limitations, mootness concerns, and remedies are different
9 for each decision.” Melchhionne v. Tilton, No. 1:08-cv-00116 OWW DLB HC, 2008 WL
10 608385, at *2 (E.D. Cal. March 4, 2008). See also Rule 2(e), Rules Governing Section 2254
11 Cases (a single petition may challenge only one state court judgment).

12 Petitioner is also cautioned that the exhaustion of state court remedies is a
13 prerequisite to the granting of a petition for writ of habeas corpus. See 28 U.S.C. § 2254(b)(1).
14 A petitioner satisfies the exhaustion requirement by fairly presenting to the highest state court all
15 federal claims before presenting them to the federal court. See Duncan v. Henry, 513 U.S. 364,
16 365 (1995) (per curiam); Picard v. Connor, 404 U.S. 270, 276 (1971); Crotts v. Smith, 73 F.3d
17 861, 865 (9th Cir. 1996); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1986).

18 Finally, petitioner is advised that in his second amended petition, he must clearly
19 state his federal constitutional claims. It is not sufficient for petitioner to merely make reference
20 to an attachment, or to attach to the petition an appellate brief filed with the state court.

21 Petitioner must answer each question on the form habeas petition, identify each of the claims he
22 is seeking to present to this court, and explain how his federal constitutional rights were violated
23 in connection with each such claim.

24 IX. Miscellaneous Motions

25 On February 3, 2010, petitioner filed a document with the court styled, “Order To
26 Show Cause,” in which petitioner seeks a court order requiring respondent to respond to his

1 amended habeas petition. In light of the court's analysis of the deficiencies in petitioner's
2 amended petition, the court will deny petitioner's request.

3 On March 5, 2010, petitioner filed a motion for the appointment of counsel.
4 There currently exists no absolute right to appointment of counsel in habeas proceedings. See
5 Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes
6 the appointment of counsel at any stage of the case "if the interests of justice so require." See
7 Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the
8 interests of justice would be served by the appointment of counsel at the present time.

9 _____ CONCLUSION

10 In accordance with the above, IT IS HEREBY ORDERED that:

- 11 1. Petitioner's amended petition, filed on February 3, 2010, is dismissed;
- 12 2. Petitioner is granted thirty days from the date of service of this order to file a
13 second amended petition that complies with the requirements of the Federal Rules of Civil
14 Procedure; the second amended petition must bear the docket number assigned this case and
15 must be labeled "Second Amended Petition;" petitioner shall use the form petition provided by
16 the court and answer each question;
- 17 3. Petitioner's February 3, 2010 request for an order to show cause (Doc. No. 11)
18 is denied;
- 19 4. Petitioner's March 5, 2010 motion for the appointment of counsel (Doc. No.
20 12) is denied without prejudice;
- 21 5. The Clerk of the Court is directed to provide petitioner with the court's form
22 petition for a writ of habeas corpus by a state prisoner; and

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1 6. Petitioner's failure to file a second amended petition in accordance with this
2 order will result in the dismissal of this action.

3 DATED: September 13, 2010.

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7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

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