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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

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Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit.<sup>1</sup> Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

In his petition, petitioner presents the following grounds for relief: (1) due to staffing shortages he has remained in lengthy lock-downs that deny inmates “the basic human need of outdoor exercise;” (2) he has been placed in solitary confinement in violation of the

<sup>1</sup> Petitioner’s May 29, 2009 in forma pauperis application is attached to his habeas petition and properly establishes that petitioner is unable to afford the costs of suit. (See Doc. No. 1 at 175.) Petitioner’s subsequent in forma pauperis application filed on June 10, 2009 (Doc. No. 4), is incomplete and will be denied.

1 Eighth Amendment which in turn has caused him to be denied release on parole; (3) he has been  
2 denied equal access to programs, trades and therapy which are necessary to be found suitable for  
3 release on parole; and (4) he is “over due (sic) for release from prison” because his commitment  
4 offense of second degree murder is on the lowest matrix and his commitment offense involved  
5 self-defense. (Pet., Suppl. at 9,19.) In terms of relief, petitioner seeks the issuance of a writ of  
6 habeas corpus, an order to show cause, an order allowing this case to proceed as a “class action  
7 petition,” injunctive relief requiring prison officials to provide daily outdoor exercise for  
8 prisoners, and any other relief found appropriate by the court. (Id. at 9.)

9           Petitioner’s petition seeks both habeas relief and relief that may appropriately be  
10 sought only in a separate civil rights action. In this regard, when a prisoner challenges the fact or  
11 duration of his custody and a determination of his action may result in plaintiff’s entitlement to an  
12 earlier release, his sole federal remedy is a writ of habeas corpus. See Preiser v. Rodriguez, 411  
13 U.S. 475 (1973); Young v. Kenny, 907 F.2d 874 (9th Cir. 1990). The proper mechanism for  
14 raising a federal challenge to conditions of confinement is through a civil rights action pursuant  
15 to 42 U.S.C. § 1983. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991).<sup>2</sup> Thus, to the extent that  
16 petitioner wishes to proceed on behalf of a class of individuals and seeks injunctive relief on their  
17 behalf, he may not do so in a habeas action. Therefore, the court will dismiss the habeas petition  
18 and grant petitioner leave to file an amended petition.

19           In a habeas action petitioner may, for example, challenge on constitutional  
20 grounds a specific hearing decision denying him parole, and he must have exhausted such a claim  
21 by first providing the highest state court with a full and fair opportunity to consider all claims  
22 before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971);  
23 Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.1986). Therefore, in any amended petition he  
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25           <sup>2</sup> Petitioner indicates in his habeas petition that he has filed a civil rights action in the  
26 U.S. District Court for the Northern District of California presenting many of the same grounds  
raised in the habeas petition pending before this court.

1 elects to file, petitioner must allege the date of the parole hearing and the parole decision he is  
2 challenging, refer to specific portions of the hearing decision where, for instance, petitioner's  
3 failure to program was a basis for the denial of parole denial. Similarly, if petitioner wishes to  
4 allege that his constitutional rights were violated when he was somehow denied release on parole  
5 because he was subjected to arbitrary lockdowns, he must at the very least name the facility and  
6 dates when he was on lockdown, and identify the programs offered at the facility that he was  
7 allegedly unable to attend because he was on lockdown.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Petitioner's May 29, 2009 application to proceed in forma pauperis, filed with  
10 the petition for writ of habeas corpus, is granted;

11 2. Petitioner's June 10, 2009 application to proceed in forma pauperis (Doc. No.  
12 4) is denied as incomplete;

13 3. Petitioner's petition for a writ of habeas corpus (Doc. No. 1) is dismissed;

14 4. Petitioner is granted thirty days from the date of service of this order to file an  
15 amended petition for writ of habeas corpus that complies with the requirements of the Federal  
16 Rules of Civil Procedure; petitioner must use the form petition provided by the court and answer  
17 each question in the form petition; the amended petition must bear the docket number assigned  
18 this case and must be labeled "Amended Petition;" petitioner's failure to file an amended petition  
19 in accordance with this order will result in the dismissal of this action; and

20 5. The Clerk of the Court is directed to provide petitioner with the court's form  
21 petition for a writ of habeas corpus by a state prisoner.

22 DATED: December 11, 2009.

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26 DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

25 DAD:4  
26 cran1511.9