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

ALBERT CRUZ,

Petitioner,

No. CIV S-09-2046 DAD P

vs.

KATHLEEN DICKINSON, Warden,

ORDER AND

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed 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. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

PRELIMINARY SCREENING

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court. . . .” Rule 4, Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may

1 dismiss a petition for writ of habeas corpus at several stages of a case, including “summary
2 dismissal under Rule 4; a dismissal pursuant to a motion by the respondent; a dismissal after the
3 answer and petition are considered; or a dismissal after consideration of the pleadings and an
4 expanded record.”

5 **BACKGROUND**

6 On July 24, 2009, petitioner commenced this action by filing a petition for writ of
7 habeas corpus. Therein, petitioner alleges that he is not receiving proper mental health or
8 substance abuse treatment at California Medical Facility. Plaintiff alleges that if he does not
9 receive proper treatment he will “use” again when he is released in 2010. Plaintiff further alleges
10 that he believes that he will commit additional crimes to support his drug-use habit if he does not
11 receive proper treatment while incarcerated. (Pet. at 5 & Attach.)

12 **ANALYSIS**

13 The instant petition should be dismissed because petitioner has failed to state a
14 cognizable claim for federal habeas relief. Petitioner is advised that habeas corpus proceedings
15 are the proper mechanism for a prisoner seeking to challenge the fact or duration of his
16 confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, petitioner does not
17 challenge the legality of his conviction, a parole proceeding, or other adjudication that has led to
18 his current incarceration. Rather, petitioner challenges the conditions of his confinement.
19 Petitioner is advised that a civil rights action, not a habeas corpus proceeding, is the proper
20 mechanism for a prisoner seeking to challenge the conditions of his confinement. 42 U.S.C.
21 § 1983; Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). Accordingly, petitioner is not entitled
22 to habeas corpus relief, and this habeas action should be dismissed without prejudice to filing a
23 civil rights action.

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1 **CONCLUSION**

2 IT IS HEREBY ORDERED:

3 1. Petitioner’s July 24, 2009 motion to proceed in forma pauperis (Doc. No. 2) is
4 granted; and

5 2. The Clerk of the Court is directed to randomly assign a United States District
6 Judge to this action.

7 IT IS HEREBY RECOMMENDED that:

8 1. Petitioner’s July 24, 2009 petition for writ of habeas corpus (Doc. No. 1) be
9 dismissed without prejudice to filing a civil rights action; and

10 2. This action be closed.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
13 days after being served with these findings and recommendations, petitioner may file written
14 objections with the court. The document should be captioned “Objections to Magistrate Judge's
15 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
16 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
17 F.2d 1153 (9th Cir. 1991).

18 DATED: July 30, 2009.

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21 _____
22 DALE A. DROZD
23 UNITED STATES MAGISTRATE JUDGE

22 DAD:9
23 cruz2046.156