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

DOCK MCNEELY,

Plaintiff/Petitioner,

No. CIV S-09-2520 GGH P

vs.

COUNTY OF SACRAMENTO,  
SHERIFF JOHN MCGINNESS, et al.,

Defendants/Respondent.

ORDER

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Although petitioner, housed in Sacramento County Main Jail, has purported to file a civil rights action, pursuant to 42 U.S.C. § 1983, he primarily seeks his immediate release from custody.

Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. 1979, as amended, 42 U.S.C. 1983. Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus, Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973); requests for relief turning on circumstances of confinement may be presented in a § 1983 action.

Muhammad v. Close, 540 U.S.749, 750, 124 S.Ct. 1303, 1304 (2004) (per curiam).

Thus, the filing will be construed as a petition for a writ of habeas corpus pursuant to 28 U.S.C.

1 § 2254. Petitioner also filed an application to proceed in forma pauperis.

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

5 Since petitioner may be entitled to relief if the claimed violation of constitutional  
6 rights is proved, respondent will be directed to file a response to petitioner's habeas petition  
7 within twenty days.

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

9 1. The Clerk of the Court is to re-designate this case as a habeas petition brought  
10 pursuant to 28 US.C. § 2254.

11 2. Petitioner's application to proceed in forma pauperis is granted;

12 3. The Clerk of the Court is to serve a copy of this order and the instant petition  
13 by mail both upon John McGinness, the Sheriff of Sacramento County, at 711 G Street,  
14 Sacramento, CA 95814-1225, as well as upon County Counsel, County of Sacramento at 700 H  
15 Street # 2650, Sacramento, CA 95814-1283. The Sheriff has twenty days from the date of this  
16 order to file a response to petitioner's request for immediate release.

17 DATED: September 15, 2009

18 /s/ Gregory G. Hollows

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20 GREGORY G. HOLLOWES  
21 UNITED STATES MAGISTRATE JUDGE

21 GGH:009  
22 mcne2520.100