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

ERICK CHRISTOPHER GARBER,

Petitioner,

No. CIV S-09-2679 KJM P

vs.

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Respondents.

ORDER

_____/

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. He has consented to magistrate judge jurisdiction. 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).

Under Rule 4 of the Rules Governing Section 2254 cases, the court must conduct a preliminary review of every habeas petition and dismiss claims if it is plainly apparent that petitioner is not entitled to relief. The court has conducted that review and determines that this action should be dismissed in its entirety.

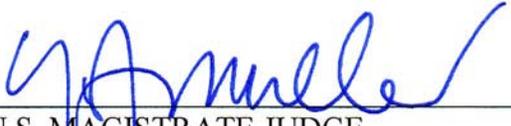
Essentially, petitioner challenges fines he has been ordered to pay and orders for restitution. The court cannot hear claims regarding fines or restitution because an action under

1 28 U.S.C. § 2254 can only concern the denial of a Constitutional right causing petitioner to be
2 “in custody” or to have a longer sentence than he would if it were not for the violation. See 28
3 U.S.C. § 2254. See also Williamson v. Gregoire, 151 F.3d 1180, 1183 (9th Cir. 1998); Bailey v.
4 Hill, ___ F.3d ___, 2010 WL 1133435 at *4 (9th Cir.) (challenge to restitution order lacked
5 nexus to custodial status required by § 2254(a)). Because the court does not have jurisdiction
6 over petitioner’s claims, this action will be dismissed.

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

- 8 1. Petitioner’s application to proceed in forma pauperis is granted;
- 9 2. Petitioner’s application for writ of habeas corpus is dismissed;
- 10 3. The court declines to issue the certificate of appealability referenced in 28
11 U.S.C. § 2253; and
- 12 4. This case is closed.

13 DATED: April 27, 2010.

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15 _____
16 U.S. MAGISTRATE JUDGE

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18 garb2679.dis(9.25.09)