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

CION PERALTA,

Petitioner,

No. CIV S-09-2953 DAD P

vs.

MICHAEL MARTEL, 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 October 22, 2009, petitioner commenced this action by filing a petition for
7 writ of habeas corpus. Therein, petitioner alleges that the warden and other prison officials at
8 Mule Creek State Prison refuse to obey court orders regarding workplace conditions at that
9 institution. Specifically, petitioner claims that the prison officials arbitrarily and capriciously
10 refuse to allow him and other Close-B custody inmates to work in certain jobs, including PIA
11 laundry and PIA jobs in all fields of maintenance and plant operations in violation of the Due
12 Process Clause of the Fourteenth Amendment. (Pet. at 5-5D, Attachs. & Pet’r’s Decl.)

13 **ANALYSIS**

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

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1 **CONCLUSION**

2 IT IS HEREBY ORDERED:

3 1. Petitioner’s October 22, 2009 application to proceed in forma pauperis (Doc.
4 No. 2) is 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 October 22, 2009 application for writ of habeas corpus (Doc. No.
9 1) be 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: November 6, 2009.

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

22 DAD:9
23 pera2953.156