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

GERALD J. PAYNE

Petitioner,

No. CIV S-10-3016 GEB GGH

vs.

TIMOTHY VIRGA

Respondents.

ORDER &
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).

Petitioner seeks habeas relief regarding a Rules Violation Report (RVR) for battery on a guard that led to a 90 day suspension of visiting privileges nearly a year ago. Petition seeks the court to force the prison to release a videotape of the incident that allegedly shows petitioner’s innocence.

The purpose of a petition for writ of habeas corpus brought pursuant to 28 U.S.C.

1 § 2254 is to challenge the legality of confinement. As petitioner is not challenging the legality of
2 confinement in this petition, nor was he ever subject to confinement from the underlying RVR,
3 the petition must be dismissed.

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

5 1. Petitioner's application to proceed in forma pauperis is granted.

6 IT IS HEREBY RECOMMENDED that the petition be dismissed.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
9 days after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
12 shall be served and filed within fourteen days after service of the objections. The parties are
13 advised that failure to file objections within the specified time may waive the right to appeal the
14 District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: December 7, 2010

16 /s/ Gregory G. Hollows

17 UNITED STATES MAGISTRATE JUDGE
18 _____

19 GGH: AB
20 payn3016.dis