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

CLARENCE ROBERTS, JR.,

Petitioner,

No. 2:10-cv-3321-JFM (HC)

vs.

HIGH DESERT STATE PRISON,

ORDER

Respondent.

FINDINGS & RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

Examination of the affidavit reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

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 of the Rules Governing Section 2254 Cases. The court must summarily dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court....” Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see

1 also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule 2(c) requires that a
2 petition (1) specify all grounds of relief available to the Petitioner; (2) state the facts supporting
3 each ground; and (3) state the relief requested. Notice pleading is not sufficient; rather, the
4 petition must state facts that point to a real possibility of constitutional error. Rule 4, Advisory
5 Committee Notes, 1976 Adoption; O'Bremski, 915 F.2d at 420. Allegations in a petition that are
6 vague, conclusory, or palpably incredible are subject to summary dismissal. Hendricks, 908
7 F.2d at 491.

8 Petitioner here challenges a \$18.00 deduction from his Trust Account for a
9 medical appliance (a hearing aid). When a prisoner challenges the fact or duration of his custody
10 and a determination of his action may result in plaintiff's entitlement to an earlier release, his
11 sole federal remedy is a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475 (1973);
12 Young v. Kenny, 907 F.2d 874 (9th Cir. 1990). Here, petitioner is not challenging his conviction
13 but rather is challenging the deduction of funds from his prison trust account pursuant to
14 California Department of Corrections' regulations or policy. See Ramirez v. Galaza, 334 F.3d
15 850, 859 (9th Cir. 2003) (“[H]abeas jurisdiction is absent, and a § 1983 action proper, where a
16 successful challenge to a prison condition will not necessarily shorten the prisoner's sentence.”),
17 cert. denied 541 U.S. 1063 (2004). This court lacks habeas jurisdiction and petitioner's
18 challenge to the deduction of funds from his trust account is properly raised through a civil rights
19 complaint brought pursuant to 42 U.S.C. § 1983. See Brasure v. Ayers, No. C 06-5823 JF (PR),
20 2007 WL 518990 *1 (N.D.Cal. Feb.14, 2007) (dismissing habeas action because petitioner's
21 claim concerning the collection of his restitution order was appropriately addressed in a civil
22 rights action).

23 Accordingly, IT IS HEREBY ORDERED that a district judge be assigned to this
24 case; and

25 IT IS HEREBY RECOMMENDED that petitioner's petition be dismissed without
26 leave to amend.

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

10 DATED: April 19, 2011.

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13 UNITED STATES MAGISTRATE JUDGE

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