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

AARON P. STONE,

Petitioner,

No. CIV S-10-3454 KJM GGH P

vs.

M. MARTEL, et al.,

Respondents.

ORDER

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Petitioner is a state prisoner proceeding pro se with this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court herein rules on four motions recently filed by petitioner: (1) a motion to dismiss filed on April 8, 2011; (2) a motion to dismiss filed on April 12, 2011; (3) a motion “pursuant to Penal Code 1494 and 1501” filed on April 14, 2011; and (4) a motion for an answer filed on April 15, 2011. Respondent has filed oppositions to each of the four motions. For the reasons discussed below, all four motions are denied.

First Motion to Dismiss

As respondent notes, the precise basis for petitioner’s April 8, 2011 motion to dismiss is unclear. He states: “On December 15, 2006, Sacramento Superior Court imposed a void judgment which was reversed on direct appeal on July 31, 2008. The law is well established that a void judgment is void even before reversal.” (Doc. #19 at 1.) Elsewhere petitioner states that “Case No. #06F2346 . . . merits dismissal with prejudice” due to “numerous due process

1 violations[.]” (Id. at 2.) In an attempt to shed light on the motion, respondent has submitted a  
2 July 31, 2008 opinion by the California Court of Appeal, Third Appellate District, reviewing  
3 petitioner’s conviction of six counts of child molestation in Superior Ct. Case No. 06F02346.  
4 (Doc. #21 , Lodged Item No. 1.) Rather than hazard a guess as to what part of the superior  
5 court’s judgment petitioner considers “void,” the undersigned observes that it lacks jurisdiction  
6 to grant petitioner’s motion in any event. Petitioner’s complaint in this action has been construed  
7 to challenge his conviction and sentence under 28 U.S.C. § 2254, with its attendant procedural  
8 and exhaustion requirements. Petitioner cannot circumvent these requirements by simply  
9 moving to dismiss state court judgments with which he disagrees. Thus, this motion is denied.

#### 10 Second Motion to Dismiss

11           The basis for petitioner’s April 12, 2011 motion to dismiss is also unclear. In it,  
12 petitioner refers to his appellate and superior court cases discussed above, alleges false  
13 imprisonment, and asserts that his reception into CDCR custody was invalid and based on  
14 “fraudulent information.” (Doc. #20 at 1-2.) As with petitioner’s first motion, these allegations  
15 cannot serve as a basis for the undersigned to dismiss any part of a state court judgment. Rather,  
16 “[c]hallenges to the validity of any confinement or to particulars affecting its duration are the  
17 province of habeas corpus.” Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S.Ct. 1827 (1973).  
18 This motion also is denied.

#### 19 Motion Pursuant to Penal Code 1494 and 1501

20           In this motion, petitioner appears to seek preliminary injunctive relief  
21 “commit[ting] him to the custody of the Sacramento Sheriff or. . . federal custody” pending  
22 judgment in this matter. The statutes he cites, California Penal Code sections 1494 and 1501,  
23 pertain to petitions for writ of habeas corpus in state court and cannot serve as a basis for relief.

24           Nor can the court properly grant petitioner’s request under federal law. The  
25 purpose of a preliminary injunction is to preserve the status quo if the balance of equities so  
26 heavily favors the moving party that justice requires the court to intervene to secure the positions

1 until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451  
2 U.S. 390, 395, 101 S.Ct (1981). In this habeas action, petitioner challenges his conviction and  
3 sentence based on alleged due process violations. Because an order temporarily placing  
4 petitioner in county or federal custody would not remedy the claims upon which this action  
5 proceeds, the court may not issue the order sought by petitioner. See De Beers Consolidated  
6 Mines v. United States, 325 U.S. 212, 65 S.Ct. 1130 (1945). Moreover, even if the undersigned  
7 were to consider the matter under the jurisdiction preservation aspect of the All Writs Act, 28  
8 U.S.C. § 1651, petitioner has offered no evidence demonstrating a fair chance of success on the  
9 merits of his complaint. This motion is therefore denied.

10 Motion for an Answer

11 In this motion, petitioner seeks an answer to his petition and documents from  
12 respondent that pertain to petitioner's imprisonment in Mule Creek State Prison. By order dated  
13 January 10, 2011, the undersigned directed respondent to file a response to the petition within  
14 sixty days. By order dated April 18, 2011, granting respondent's request for an extension of  
15 time, the response is now due on or before May 11, 2011. In his opposition to the instant motion,  
16 respondent states that he intends to file a response to the petition and, in doing so, will comply  
17 with Rule 5 of the Federal Rules governing § 2254 cases. Respondent further states that, if the  
18 response is an answer, he will lodge with the court "all transcripts and other documents relevant  
19 to the issues presented in the petition." (Doc. #29 at 2.) Nothing more is required of respondent  
20 at this time. Thus, petitioner's motion for an answer is denied.

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1 Accordingly, IT IS HEREBY ORDERED THAT:

2 1. Petitioner's April 8, 2011 motion to dismiss (Doc. #19) is denied;

3 2. Petitioner's April 12, 2011 motion to dismiss (Doc. #20) is denied;

4 3. Petitioner's April 14, 2011 motion pursuant to Penal Code 1494 and 1501  
5 (Doc. #23) is denied; and

6 4. Petitioner's April 15, 2011 motion for an answer (Doc. #26) is denied.

7 DATED: May 3, 2011

8 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

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