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

CHRISTOPHER T. SMITH,

Plaintiff,

No. 2:11-cv-0491 KJN P

vs.

CALIFORNIA DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel, with a civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the magistrate judge for all purposes. 28 U.S.C. § 636(c) and Local Rule 302(a). (Dkt. No. 5.)

Plaintiff has submitted an amended in forma pauperis application that demonstrates petitioner is unable to afford the costs of suit. See 28 U.S.C. § 1915(a). However, because it is unclear whether petitioner’s pleading is properly framed as a civil rights action, rather than an action in habeas corpus, and because the filing costs associated with each pleading are different, the court will defer ruling on the application to proceed in forma pauperis until plaintiff has filed an amended pleading.

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1 The initial pleading provides in full (Dkt. No. 1 at 1-2):

2 I feel that Ms. Callison conducted herself in an unp[ro]fessional[]
3 ma[nn]er and has lied in her allegations against me, which resulted
4 in an additional six months being added to my sentence which also
5 r[e]ndered me a program failure, [a] twelve months shu [placement
6 in the Segregated Housing Unit], and had my fire camp program
7 revoked.

8 Relief: I would like the additional six months added to my
9 sentence vacated. And my original release date restored. I would
10 also like my fire camp program as well as my original “point
11 status” returned. I’m also requesting trial by jury, so that I may
12 face my accuser in court.

13 Amendment of the pleading is necessary. A challenge to the duration of a
14 prisoner’s confinement is properly made in a petition for writ of habeas corpus, pursuant to 28
15 U.S.C. § 2254; in contrast, a suit for damages challenging a condition of confinement must be
16 brought in a civil rights action, pursuant to 42 U.S.C. § 1983. Moreover, the exhaustion
17 requirements are different as to each type of action—a federal habeas claim must first be
18 exhausted in the state courts, Rose v. Lundy, 455 U.S. 509 (1982), while a civil rights claim must
19 first be exhausted through the institution’s administrative appeal system, 42 U.S.C. § 1997e(a);
20 Booth v. Churner, 532 U.S. 731, 741 (2001). In addition, a prisoner may not proceed with a civil
21 rights damages action that is premised on the outcome of an institutional disciplinary hearing
22 decision unless that decision has been invalidated. Edwards v. Balisok, 520 U.S. 641 (1997);
23 Heck v. Humphrey, 512 U.S. 477 (1994).

24 Finally, plaintiff names as defendants in this action the California Department of
25 Corrections and Rehabilitation and “Karen, Callison,” whose professional capacity remains
26 unknown. While a properly drawn civil rights complaint may name any defendant with an
asserted direct role in the alleged violation of plaintiff’s constitutional rights, the only proper
respondent in a petition for writ of habeas corpus is the state officer having custody of the
petitioner (i.e., the warden of the prison in which petitioner is incarcerated). See 28 U.S.C. §
2254; Rule 2(a), Rules Governing § 2254 Cases; Stanley v. California Supreme Court, 21 F.3d

1 359, 360 (9th Cir. 1994).

2 For the foregoing reasons, the court must grant petitioner leave to file an amended
3 pleading, framed either as an amended civil rights complaint or a petition for writ of habeas
4 corpus. If plaintiff chooses to file a petition for writ of habeas corpus, he must demonstrate
5 exhaustion of his state court remedies, and name as respondent only the warden of the facility in
6 which petitioner is incarcerated. If plaintiff chooses to file an amended civil rights complaint, he
7 must demonstrate exhaustion of available administrative remedies, and name as defendants only
8 individuals who personally participated in a substantial way in allegedly depriving plaintiff of a
9 federal constitutional right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person
10 subjects another to the deprivation of a constitutional right if he does an act, participates in
11 another's act, or omits to perform an act that he is legally required to perform, thus causing the
12 alleged deprivation). The complaint or petition must identify the specific relief sought, and the
13 claims must be set forth in short and plain terms, simply, concisely and directly. See Fed. R. Civ.
14 P. 8; Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of
15 a simplified pleading system, which was adopted to focus litigation on the merits of a claim").

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

17 1. The court defers consideration of plaintiff's application to proceed in forma
18 pauperis;

19 2. The complaint is dismissed;

20 3. The Clerk of Court is directed to send plaintiff the forms used by prisoners in
21 this district for filing (1) a petition for writ of habeas corpus, and (2) a civil rights complaint.

22 4. Plaintiff shall, within thirty days after service of this order, complete the
23 attached Notice of Amendment and submit the following to the court:

24 a. The completed Notice of Amendment;


25 b. An amended pleading, prefaced by one of the forms provided herein by
26

1 the Clerk of Court, and clearly designated either an Amended Petition for Writ of Habeas Corpus
2 or a Civil Rights Complaint pursuant to 42 U.S.C. § 1983;

3 c. Alternatively, if plaintiff concludes that he does not yet meet the
4 requirements for filing either a civil rights complaint or a petition for writ of habeas corpus,
5 plaintiff may request the voluntary dismissal of this action.

6 SO ORDERED.

7 DATED: April 29, 2011

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10 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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Defendants.

NOTICE OF AMENDMENT

_____ /

Plaintiff hereby submits the following document in compliance with the court's
order filed _____:

Amended Complaint

OR

Petition for Writ of Habeas Corpus

Alternatively:

Plaintiff requests voluntary dismissal of this action.

_____ Date

_____ Plaintiff