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

ARNOLD D. BUTLER,

Plaintiff,

No. CIV S-11-1052 GGH P

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Defendants.

ORDER

_____/

Plaintiff is an inmate at Butte County Jail and is proceeding pro se. Plaintiff has consented to the jurisdiction of the undersigned. See Docket # 5. By order filed on May 24, 2011, plaintiff's "woefully deficient" initial filing, a purported civil rights complaint, was stricken and plaintiff was granted leave within twenty-eight days to file an amended complaint and either the appropriate in forma application or the filing fee. Plaintiff thereafter filed a purported amended complaint and paid the \$350.00 filing fee in full. The amended complaint was dismissed by order, filed on June 17, 2011, for having provided wholly inadequate information upon which plaintiff could proceed. Plaintiff was granted leave to file, within twenty-eight days, a second amended complaint. Plaintiff failed to file a second amended complaint.

1 Instead, plaintiff, on June 22, 2011, filed a notice to the Clerk of the Court that he
2 intended to file a petition for writ of habeas corpus and noting that he had paid a \$350.00 filing
3 fee for what he intended to be a habeas corpus petition. On June 28, 2011, plaintiff filed a
4 request to “change to code from a law su[it] to a habeas corpus.” Docket # 12. He sought to file
5 a habeas petition naming the State of California as respondent for allegedly violating plaintiff’s
6 due process rights; he also wished to raise an ineffective assistance of counsel claim. The most
7 information he provides is that he is “seeking relief on my prior case.” Id.

8 Thereafter, on July 5, 2011, plaintiff filed a document entitled “2254 motion” and
9 setting forth in the motion caption the following: “1. Ineffective Assistance of Counsel; 2.
10 Violation of Due Process Rights; 3. Constitutional Right Violated.” Docket # 13. Plaintiff in
11 this putative motion asks the court “to take the action under nonprotunc [sic].” Id. Plaintiff then
12 sets forth a litany of claims regarding a 1992 conviction for possession for sale and intent to
13 deliver rock cocaine base for which he was sentenced to four years in prison and four years on
14 supervised release. Plaintiff claims to have “been fighting this prior for 12 years.” Id., at 2. He
15 believes that the state courts have never properly considered his claims for various reasons, one
16 being that his letters to the courts have often been filed in another individual’s court files because
17 plaintiff had been a victim of identity theft of this individual who had been charged with the
18 murder of a police officer.

19 On the face of it, it does not appear that plaintiff can proceed herein as petitioner
20 under 28 U.S.C. § 2254 on his challenges to his 1992 conviction and sentence because he it does
21 not appear to be possible that he is in custody pursuant to that judgment. Maleng v. Cook, 490
22 U.S. 488, 490, 109 S. Ct. 1923 (1989)(“[w]e have never held...that a habeas petitioner may be ‘in
23 custody’ under a conviction when the sentence imposed for that conviction has *fully expired* at
24 the time his petition is filed” [emphasis in original]). Plaintiff states that he was sentenced to
25 four years in prison plus four years of supervised release; thus, it would seem that he was no
26 longer in custody for any purpose on this conviction as of 2000 or thereabouts, more than a

1 decade ago. Moreover, even if plaintiff (petitioner) was seeking to attack the prior conviction
2 because it was being used (or had been used) to enhance a present sentence, absent a claim that
3 no counsel was provided whatsoever, alleged errors in the prior conviction is not actionable.
4 Lackawanna County District Attorney v. Coss, 532 U.S. 394, 406, 121 S.Ct. 1567 (2001).

5 As plaintiff does not wish to proceed under 42 U.S.C. § 1983 and it does not
6 appear that he has any basis to proceed under 28 U.S.C. § 2254, the court will dismiss this action.
7 Plaintiff's inapposite motion, filed on July 5, 2011, will be denied.

8 Accordingly, IT IS ORDERED that:

- 9 1. Plaintiff's motion, filed on July 5, 2011 (docket # 13), is denied as both
10 inapposite and moot; and
11 2. This case is dismissed.

12 DATED: September 14, 2011

13 /s/ Gregory G. Hollows
14 UNITED STATES MAGISTRATE JUDGE

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