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

ELWOOD DUANE HAYES,

Petitioner,

No. 2:11-cv-01378 LKK KJN P

vs.

CALIFORNIA SUPREME COURT, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Petitioner, a state prisoner proceeding without counsel, has filed a 377-page amended<sup>1</sup> petition for writ of mandamus to compel the California Supreme Court to rule on his petition for writ of mandate pending in that court. Petitioner also names California’s Third District Court of Appeal, the Siskiyou County Superior Court, the California Attorney General, and petitioner’s appellate counsel, Thea Greenholgh. Petitioner seeks to challenge his conviction and sentence on several grounds, including ineffective assistance of counsel. In addition, petitioner has filed two motions to stay this action, pending a ruling from the California Supreme

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<sup>1</sup> The amended petition (Dkt. No. 4), filed shortly after petitioner filed his initial petition (Dkt. No. 1), and before service of process on respondents, is the operative petition. Fed. R. Civ. P. 15(a).

1 Court.<sup>2</sup> (Dkt. Nos. 7, 8.) Petitioner has been granted in forma pauperis status. (Dkt. No. 3.)

2 This action lacks merit. Federal courts lack jurisdiction to issue a writ of  
3 mandamus directed at state courts or their judges. Demos v. United States District Court, 925  
4 F.2d 1160, 1161 (9th Cir. 1991) (petition for writ of mandamus to compel state court action is  
5 frivolous as a matter of law), citing 28 U.S.C. § 1651. Rather, “[t]he district courts shall have  
6 original jurisdiction of any action in the nature of mandamus [only] to compel an officer or  
7 employee of the United States or agency thereof to perform a duty owed to the plaintiff.” 28  
8 U.S.C. § 1361. Thus, pursuant to 28 U.S.C. § 1651, federal courts may issue only those “writs  
9 necessary or appropriate in aid of their respective jurisdictions,” that is, within a federal court’s  
10 subject matter jurisdiction as defined by statute. See Commercial Security Bank v. Walker Bank  
11 & Trust Co., 456 F.2d 1352, 1355 (10th Cir. 1972) (“Section 1651(a) does not operate to confer  
12 jurisdiction; ancillary jurisdiction is provided where jurisdiction is otherwise already lodged in  
13 the court”) (fn. omitted).

14 Because petitioner may not seek a writ of mandamus from a federal court to direct  
15 the conduct of state officials, his petition must be dismissed, and this action closed.<sup>3</sup>

16 Accordingly, for the reasons stated herein, IT IS HEREBY RECOMMENDED  
17 that:

18 1. Petitioner’s amended petition for a writ of mandamus (Dkt. No. 4) be  
19 dismissed with prejudice for lack of jurisdiction;

20 2. Petitioner’s motions to stay this action (Dkt. Nos. 7, 8) be denied as moot; and  
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22 <sup>2</sup> This action was referred to the undersigned and to the above-noted district judge on August  
23 31, 2011. (Dkt. Nos. 11, 12.) The court notes, however, that this action was originally filed on April  
24 22, 2011, in the Fresno division of this court.


25 <sup>3</sup> *After* the California Supreme Court has ruled on *each* of petitioner’s claims, petitioner may  
26 file a *new* action in habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction and  
sentence. A federal district court may not consider a petition for habeas corpus unless the petitioner  
has exhausted state remedies with respect to *each* of the claims raised. Rose v. Lundy, 455 U.S. 509  
(1982).

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3. This action be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: September 6, 2011

  
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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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