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

BILLY J. LACEY,

Petitioner,

No. CIV S-11-2946 CKD P

vs.

DERRAL ADAMS,

Respondent.

ORDER and

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 request to proceed in forma pauperis 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).

Under Rule 4 of the Rules Governing § 2254 Cases, the court must conduct a preliminary review of § 2254 habeas petitions and dismiss any petition where it plainly appears that petitioner is not entitled to relief in this court. A writ of habeas corpus is available if the court finds that petitioner is in custody in violation of federal law. 28 U.S.C. § 2254(a).

In his petition, petitioner does not allege that he is in custody in violation of federal law. Rather, he takes issue with his conditions of confinement. If petitioner wishes to

1 challenge conditions of confinement, e.g. he is being subjected to cruel and unusual punishment
2 in violation of the Eighth Amendment, the correct course of action would be to commence an
3 action under 42 U.S.C. § 1983. See Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003).
4 Petitioner is warned, however, that if he commences a § 1983 action, he will be required to pay
5 the \$350 filing fee, although he will be allowed to pay it in installments.

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

- 7 1. Petitioner's request for leave to proceed in forma pauperis (#2) is granted; and
- 8 2. The Clerk of the Court assign a district court judge to this case.

9 IT IS HEREBY RECOMMENDED that petitioner's application for writ of habeas
10 corpus be dismissed.

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

18 Dated: December 2, 2011

19 
20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE