

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

CONNOR A. DAVIS,

Petitioner,

No. CIV S-11-3238 DAD P

vs.

THOMPSON et al.,

Respondents.

ORDER

\_\_\_\_\_ /

Petitioner, a county jail inmate proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

**PRELIMINARY SCREENING**

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court. . . .” Rule 4, Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus at several stages of a case, including “summary

1 dismissal under Rule 4; a dismissal pursuant to a motion by the respondent; a dismissal after the  
2 answer and petition are considered; or a dismissal after consideration of the pleadings and an  
3 expanded record.”

4 **BACKGROUND**

5 On December 6, 2011, petitioner commenced this action by filing a petition for  
6 writ of habeas corpus with this court. Therein, he alleges that the Colusa County Sheriff’s  
7 Department and the Colusa County court system, including its judges, the district attorney, and  
8 his public defender, have all failed to provide him with adequate mental health care. In this  
9 regard, petitioner contends that he needs to be transferred to a treatment facility where he can  
10 receive appropriate care. Petitioner also contends that he is not receiving adequate food and  
11 heating at the Colusa County Jail where he is currently confined. (Pet. at 3-4.)

12 **ANALYSIS**

13 The instant petition will be dismissed because petitioner has failed to state a  
14 cognizable claim for federal habeas relief. Petitioner is advised that habeas corpus proceedings  
15 are the proper mechanism for a prisoner seeking to challenge the fact or duration of his  
16 confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, petitioner does not  
17 challenge the legality of his conviction, a parole proceeding, or other adjudication that has led to  
18 his current incarceration. Rather, petitioner challenges the conditions of his confinement.  
19 Petitioner is advised that a civil rights action, not a habeas corpus proceeding, is the proper  
20 mechanism for a prisoner seeking to challenge the conditions of his confinement. 42 U.S.C.  
21 § 1983; Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). Accordingly, petitioner is not entitled  
22 to habeas corpus relief, and this habeas action will be dismissed without prejudice to filing a civil  
23 rights action.<sup>1</sup>

24 ////

---

25 <sup>1</sup> Petitioner previously consented to Magistrate Judge jurisdiction over this action  
26 pursuant to 28 U.S.C. § 636(c). (See Doc. No. 3.)

1 **OTHER MATTERS**

2 Also pending before the court are several motions from petitioner, including a  
3 motion for appointment of counsel. In light of the conclusion reached above that this habeas  
4 action must be dismissed, the court will deny petitioner’s motions as moot.

5 Rule 11 of the Federal Rules Governing Section 2254 Cases states that “the  
6 district court must issue or deny a certificate of appealability when it enters a final order adverse  
7 to the applicant.” A certificate of appealability should be granted for any issue that petitioner can  
8 demonstrate is “debatable among jurists of reason,” could be resolved differently by a different  
9 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,  
10 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). For  
11 the reasons set forth above, the court declines to issue a certificate of appealability in this action.

12 **CONCLUSION**

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Petitioner’s motion to proceed in forma pauperis (Doc. No. 7) is granted;  
15 2. Petitioner’s application for writ of habeas corpus (Doc. No. 1) is dismissed  
16 without prejudice to filing a civil rights action;  
17 3. Petitioner’s motions (Doc. Nos. 8, 12 & 13) are denied as moot;  
18 4. A certificate of appealability is not issued in this action; and  
19 5. This action is closed.

20 DATED: March 1, 2012.

21   
22 \_\_\_\_\_  
23 DALE A. DROZD  
24 UNITED STATES MAGISTRATE JUDGE

23 DAD:9  
24 davi3238.156