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

JAMES A. BRINKLEY,

Petitioner,

No. CIV S-12-0386 CKD P

vs.

YUBA COUNTY SUPERIOR COURT,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se. He seeks a writ of mandate pursuant to 28 U.S.C. § 1651 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Petitioner has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

As petitioner seeks a writ addressing a state court denial of a habeas petition, for screening purposes the court will treat the instant petition as arising under 28 U.S.C. § 2254 . Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 provides for summary dismissal of a habeas petition “[i]f 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.” In the

1 instant case, it is plain from the petition that petitioner is not entitled to the relief he seeks.

2 Petitioner seeks a writ of mandate from this court to order the Yuba County
3 Superior Court to “correct a null ruling caused when the Honorable James L. Curry ruled on
4 petitioner’s amended petition [for] habeas corpus filed on July 10, 2005.” (Dkt. No. 1.) Federal
5 courts lack jurisdiction to issue a writ of mandamus to a state court. Demos v. United States
6 Dist. Court for the E. Dist. of Wash., 925 F.2d 1160, 1161 (9th Cir. 1991), citing 28 U.S.C. §
7 1651; see also Alford v. Shasta County Superior Court, No. CIV-S-11-2583 WBS GGH P, 2012
8 WL 671941 at *1 (E. D. Cal. Feb. 29, 2012) (screening order dismissing petition for writ of
9 mandate to state court). If petitioner seeks to challenge the validity of his confinement, he may
10 proceed by way of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Preiser v.
11 Rodriguez, 411 U.S. 475, 484 (1973). Petitioner will be granted 30 days to amend the petition to
12 state a claim for federal habeas relief under section 2254.

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

14 1. Petitioner’s request for leave to proceed in forma pauperis is granted.

15 2. Petitioner is granted 30 days from the date of service of this order to file an
16 amended petition (labeled “First Amended Petition”) pursuant to 28 U.S.C. § 2254. Failure to
17 timely file an amended petition will result in a recommendation that this action be dismissed.

18 Dated: May 3, 2012

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20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

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