

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL BAZLEY,

No. 2:13-cv-0814 AC P

Plaintiff,

ORDER

RICK HILL, Warden,

Defendant.

Petitioner, a California state prisoner at the time he filed this action, proceeds pro se and seeks relief from his sentence pursuant to 28 U.S.C. § 2254. The habeas petition presents a single claim: that petitioner’s three-year sentence for identity theft was improperly “enhanced” on the basis of a constitutionally infirm prior conviction. ECF No. 1 at 4-5. Petitioner expressly challenges his sentence only, and not the underlying Sacramento County conviction. Id. at 1. Respondent has answered, ECF No. 18, and petitioner filed a response, ECF No. 21.

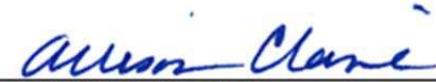
The court has an obligation to examine its jurisdiction, and may raise the issue *sua sponte*. Snell v. Cleveland, Inc., 316 F.3d 822, 826 (9th Cir. 2002). Federal habeas jurisdiction lies for constitutional challenges to the fact or duration of a state prisoner's confinement. Preiser v. Rodriguez, 411 U.S. 475, 487-88, 490 (1973); Bailey v. Hill, 599 F.3d 976 (9th Cir. 2010); Young v. Kenny, 907 F.2d 874, 876 (9th Cir. 1990), cert. denied, 498 U.S. 1126 (1991). Habeas jurisdiction is absent where a prisoner challenges a condition of confinement that does not

1 directly implicate the duration of the sentence. Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir.
2 2003), cert. denied, 541 U.S. 1063 (2004).

3 In this case, the allegedly invalid prior conviction was not used as a sentencing
4 enhancement in the end, and thus had no direct effect on the three-year term of imprisonment to
5 which petitioner was sentenced.¹ Petitioner challenges not the length the sentence imposed but
6 that fact that he was ordered to serve it in state prison rather than in county jail pursuant to the
7 “realignment” statute. ECF No. 1 (petition) at 4. This court accordingly may lack jurisdiction to
8 entertain the petition. If so, the court may not consider the merits of the claim, and it also may be
9 unnecessary to reach the various bars to relief asserted in the answer. However, petitioner
10 appears to allege that if he had been permitted to serve his sentence in a county jail facility he
11 would not have been subject to a term of parole supervision following his release from custody.
12 Id. at 5. The undersigned is unable to determine from the pleadings whether petitioner’s
13 ineligibility for county jail custody had a necessary effect on the actual duration of his
14 confinement or on the total period of time during which he was (or is) under sentence.

15 Accordingly, Respondent is HEREBY ORDERED to file a letter brief not exceeding three
16 pages in length, within 14 days, addressing the effect, if any, of petitioner’s commitment to state
17 prison rather than county jail on (a) the amount of time spent in custody, and (b) the amount of
18 time spent under continuing criminal sentence following release, with or without active
19 supervision. Petitioner may file a reply within 14 days of service with Respondent’s letter brief.

20 DATED: January 30, 2015

21 
22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE

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28 ¹ See RT 1-4 (change of plea), 9A (sentencing); CT 72 (abstract of judgment).