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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAURICE RAHIM MUHAMMAD,  
Petitioner,  
v.  
STATE OF CALIFORNIA,  
Respondent.

No. 2:13-cv-1501 KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel, 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).

Under Rule 4 of the Rules Governing Section 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.

On August 30, 2000, petitioner was convicted in the Sacramento County Superior Court, and sentenced to three years in state prison. (ECF No. 1.) Petitioner alleges he suffered ineffective assistance of counsel, claiming defense counsel misrepresented to petitioner that the

1 criminal charges would later be dismissed if petitioner pled “no contest,” and accepted the  
2 conviction. (ECF No. 1 at 16.) Petitioner claims counsel advised petitioner “that if petitioner  
3 pled ‘no contest,’ shortly after release, the conviction would be removed from his record (upon  
4 setting a court date to do so).” (ECF No. 1 at 17.) Petitioner alleges that upon his release, he set  
5 up a court date, but his request was denied. Petitioner seeks to withdraw his “no contest” plea.  
6 Further, petitioner claims that he is “currently suffering enhancements and other prejudicial  
7 treatment” based on this 2000 conviction. (ECF No. 1 at 20.) Petitioner argues that California  
8 Penal Code § 1473<sup>1</sup> allows this court to consider the instant petition beyond the statute of  
9 limitations period provided in 28 U.S.C. § 2244(d) and to vacate the judgment of someone who is  
10 no longer unlawfully imprisoned. (ECF No. 1 at 13, 20.)

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13 <sup>1</sup> Section 1473 is entitled “Persons authorized to prosecute a writ of habeas corpus; false  
14 evidence,” and provides as follows:

15 (a) Every person unlawfully imprisoned or restrained of his liberty, under any pretense  
16 whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment  
or restraint.

17 (b) A writ of habeas corpus may be prosecuted for, but not limited to, the following  
18 reasons:

19 (1) False evidence that is substantially material or probative on the issue of guilt or  
20 punishment was introduced against a person at any hearing or trial relating to his  
incarceration; or

21 (2) False physical evidence, believed by a person to be factual, probative, or  
22 material on the issue of guilt, which was known by the person at the time of entering a  
23 plea of guilty, which was a material factor directly related to the plea of guilty by the  
person.

24 (c) Any allegation that the prosecution knew or should have known of the false  
25 nature of the evidence referred to in subdivision (b) is immaterial to the prosecution of a  
writ of habeas corpus brought pursuant to subdivision (b).

26 (d) Nothing in this section shall be construed as limiting the grounds for which a  
27 writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

28 Cal. Penal Code § 1473.

1 Pursuant to 28 U.S.C. § 2254(a), a federal court “shall entertain an application for a writ  
2 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only  
3 on the ground that he is in custody in violation of the Constitution or laws or treaties of the United  
4 States.” Section 2254(a)'s custody requirement “has been interpreted to mean that federal courts  
5 lack jurisdiction over habeas corpus petitions unless the petitioner is under the conviction or  
6 sentence under attack at the time his petition is filed.” Bailey v. Hill, 599 F.3d 976, 978-79 (9th  
7 Cir. 2010) (citation and internal quotations omitted); see also Maleng v. Cook, 490 U.S. 488, 490-  
8 91 (1989) (per curiam) (interpreting § 2254(a) “as requiring that the habeas petitioner be ‘in  
9 custody’ under the conviction or sentence under attack at the time his petition is filed”). Because  
10 the custody requirement is jurisdictional, “it is the first question [the court] must consider.”  
11 Bailey, 599 F.3d at 978 (internal citation and quotation marks omitted).

12 “The boundary that limits the ‘in custody’ requirement is the line between a ‘restraint on  
13 liberty’ and a ‘collateral consequence of a conviction.’” Id. at 979 (citation, internal quotation  
14 marks omitted). Thus, a petitioner on parole is considered to be “in custody.” Jones v.  
15 Cunningham, 371 U.S. 236, 242-43 (1963). Once the sentence imposed for a conviction has  
16 “completely expired,” however, the collateral consequences of that conviction are not sufficient  
17 to render an individual “in custody” for purposes of a habeas petition. Maleng, 490 U.S. at 492  
18 (holding that a previous conviction cannot be challenged where petitioner has been released from  
19 prison and the only collateral consequence left from that conviction is the lengthening of a  
20 subsequent sentence).

21 Here, petitioner states that in 2000 he was sentenced to three years, and confirms he was  
22 released from custody. Petitioner does not claim that he was placed on parole at the time of his  
23 release, or that he remains on parole from the 2000 conviction at this time.

24 In addition, court records reflect that petitioner was subsequently convicted on June 10,  
25 2011, and sentenced to seven years in state prison, Muhammad v. Diaz, 2:13-cv-0153 CMK (E.D.  
26 Cal.). Thus, it appears petitioner is presently in custody based on the 2011 conviction, not the  
27 2000 conviction. This is further substantiated by petitioner’s claim that he suffered an  
28 enhancement based on the 2000 conviction. (ECF No. 1 at 20.)

1 Finally, on May 22, 2013, the California Supreme Court denied the petition with citations  
2 to People v. Villa, 45 Cal.4th 1063 (2009). (ECF No. 1 at 19.) The citation to Villa indicates that  
3 the petition was denied because petitioner was no longer in actual or constructive state custody.  
4 See Villa, 45 Cal.4th at 1066, 1070-71 (holding that defendant who is not in state custody is  
5 ineligible for habeas relief and that collateral consequences of conviction, such as sex-offender-  
6 registration requirement, do not constitute constructive custody).

7 Therefore, the documents provided by petitioner demonstrate that he was not “in custody”  
8 for the 2000 conviction when he filed the instant petition. See Tatarinov v. Superior Ct., 388 F.  
9 Appx. 624, 625 (9th Cir. 2010) (noting that “a defendant is no longer ‘in custody’ once he is  
10 discharged from probation or parole”); see also Maleng, 490 U.S. at 492 (“While we have very  
11 liberally construed the ‘in custody’ requirement for purposes of federal habeas, we have never  
12 extended it to the situation where a habeas petitioner suffers no present restraint from a  
13 conviction.”).<sup>2</sup> Contrary to petitioner’s argument, California Penal Code § 1473 does not provide  
14 a basis for jurisdiction for petitioner to challenge the 2000 conviction in this court.

15 Therefore, it is recommended that this action be dismissed for lack of jurisdiction.

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

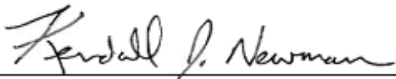
- 17 1. Petitioner’s motion to proceed in forma pauperis is granted;  
18 2. The Clerk of the Court is directed to assign a district judge to this case; and  
19 IT IS RECOMMENDED that this action be dismissed with prejudice.

20 These findings and recommendations are submitted to the United States District Judge  
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
22 after being served with these findings and recommendations, petitioner may file written  
23 objections with the court and serve a copy on all parties. Such a document should be captioned  
24 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,

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26 <sup>2</sup> In addition, relief is generally unavailable to a state prisoner through a petition for writ of  
27 habeas corpus when the prisoner challenges a current sentence on the ground that it was enhanced  
28 based on an allegedly unconstitutional prior conviction for which the petitioner is no longer in  
custody. Lackawanna Cnty. Dist. Attorney v. Coss, 532 U.S. 394 (2001).

1 he shall also address whether a certificate of appealability should issue and, if so, why and as to  
2 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
3 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
4 § 2253(c)(3). Petitioner is advised that failure to file objections within the specified time may  
5 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
6 1991).

7 Dated: August 2, 2013

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10 KENDALL J. NEWMAN  
11 UNITED STATES MAGISTRATE JUDGE

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