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

TAMIR ABDULLAH HABEEB,

No. 2:14-cv-0706-CMK-P

Petitioner,

vs.

ORDER

F. FOULK,

Respondent.

_____ /

Petitioner, a state prisoner, brings this action *in propria persona*. Petitioner initiated this action by filing a motion for an extension of time, asking for additional time in which to file his petition for writ of habeas corpus. Since then, petitioner has filed several requests to amend his complaint and/or supplement his complaint. He has also filed a motion to appoint counsel.

As petitioner’s first filing requested additional time to file his habeas petition, the court opened this case as a federal habeas corpus action pursuant to 28 U.S.C. § 2254. Petitioner subsequent filings, however, raises the question as to what petitioner is attempting to achieve in this action. His recent filings appear to challenge his treatment while incarcerated, referencing perhaps retaliation, use of excessive force, and other Eighth Amendment violations. He also

1 refers to himself as plaintiff, rather than as petitioner as he did in his original filing. Finally, he
2 appears to name additional defendants rather than just the warden of the prison. It would appear,
3 therefore, that his intention was to initiate a prisoner civil rights action under 42 U.S.C. § 1983,
4 or perhaps initiate a separate action with the subsequent filings. Either way, the court needs
5 clarification from petitioner.

6 Before this action can proceed, either as a habeas case or a prisoner civil rights
7 action, petitioner's fee status must be resolved. The court notes that petitioner has not filed an
8 application to proceed in forma pauperis, along with the proper certifications. In addition, before
9 the court could grant such a motion, it has to be determined what type of action petitioner is
10 pursuing so the court can determine the appropriate filing fees.

11 When a state prisoner challenges the legality of his custody – either the fact of
12 confinement or the duration of confinement – and the relief he seeks is a determination that he is
13 entitled to an earlier or immediate release, such a challenge is cognizable in a petition for a writ
14 of habeas corpus under 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973);
15 see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49
16 F.3d 583, 586 (9th Cir. 1995) (per curiam). Where a prisoner challenges the conditions of
17 confinement, as opposed to the fact or duration of confinement, his remedy lies in a civil rights
18 action under 42 U.S.C. § 1983. See Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985).
19 Thus, 28 U.S.C. § 2254 cannot be used to challenge the conditions of confinement, and 42
20 U.S.C. § 1983 cannot be used to challenge the fact or duration of confinement.

21 It appears petitioner wishes to challenge the conditions of his confinement, as he
22 indicates that he is suffering from retaliation and use of excessive force. However, as he
23 originally indicated his intention of filing a habeas petition, the court opened this action as a
24 habeas case. To challenge the conditions of his confinement, or his treatment while incarcerated,
25 petitioner is attempting to proceed under the wrong process. The Clerk of the Court will be
26 directed to provide petitioner with both a new habeas petition as well as a civil rights complaint,

1 and petitioner will be required to choose how he wishes to proceed and file an amended pleading.

2 Either way petitioner chooses to proceed, his amended petition or complaint must
3 be filed within the time provided in this order. Petitioner must raise all his claims and/or grounds
4 for relief in one pleading. However, from petitioner’s filings, it appears that he may be
5 attempting to bring an action against several unrelated individuals on separate and unrelated
6 claims. The Federal Rules of Civil Procedure allow a party to assert “as many claims as it has
7 against an opposing party,” but does not provide for unrelated claims against several different
8 defendants to be raised in the same action. Fed. R. Civ. Proc. 18(a). “Thus multiple claims
9 against a single party are fine, but Claim A against Defendant 1 should not be joined with
10 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
11 different suits.” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

12 Petitioner is warned that failure to file the appropriate pleading within the time
13 provided in this order may be grounds for dismissal of this action. See Ferdik v. Bonzelet, 963
14 F.2d 1258, 1260-61 (9th Cir. 1992); see also Local Rule 110. Petitioner is also warned that if he
15 files a complaint which fails to comply with Rule 8 it may, in the court’s discretion, be dismissed
16 with prejudice pursuant to Rule 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671,
17 673 (9th Cir. 1981).

18 Petitioner has also filed a motion for the appointment of counsel (Doc. 4). Before
19 his motion can be properly evaluated, the court must determine the proper classification for this
20 case as the standards for appointing counsel are different depending on the type of proceeding.
21 Regardless of they type of proceeding, however, whether counsel is appointed to assist plaintiff
22 will only be necessary if the action proceeds. If this case is dismissed on procedural grounds,
23 appointment of counsel will be unnecessary. Therefore, the motion will be denied without
24 prejudice to renewal once petitioner has filed the necessary amended pleadings and application to
25 proceed in forma pauperis.

26 ///

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Petitioner's request for time to file his petition for writ of habeas corpus
3 (Doc. 1) is granted to the extent that petitioner is required to file an actual petition to initiate this
4 case;

5 2. The Clerk of the Court shall send petitioner both a blank petition for writ
6 of habeas corpus and a blank prisoner civil rights form complaint;

7 3. Petitioner shall choose whether he will proceed in this action with a
8 petition for writ of habeas corpus appropriately challenging a conviction or whether he will file a
9 complaint to proceed in a civil rights action pursuant to 42 U.S.C. § 1983;

10 4. Petitioner shall file his amended pleading within 30 days of the date of
11 service of this order;

12 5. Petitioner shall also submit on the form provided by the Clerk of the
13 Court, within 30 days from the date of this order, a complete application for leave to proceed in
14 forma pauperis, with the required certifications, or the appropriate filing fee;

15 6. The Clerk of the Court is further directed to send petitioner a new form
16 Application to Proceed In Forma Pauperis By a Prisoner;

17 7. Petitioner's motion for appointment of counsel (Doc. 4) is denied without
18 prejudice to renewal once petitioner determines how he will proceed in this action and files the
19 appropriate amended pleadings and in forma pauperis application; and

20 8. Petitioner's motion to amend his complaint (Doc. 5) is denied as
21 unnecessary.

22
23 DATED: October 30, 2014

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE