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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD JONES,
Petitioner,
v.
ROBERT M. FOX, Warden,
Respondent.

No. 2:14-cv-2475 JAM KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has now filed a request to proceed in forma pauperis.

Examination of the affidavit reveals petitioner is unable to afford the costs of this action. Accordingly, leave to proceed in forma pauperis is granted. 28 U.S.C. § 1915(a).

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court. . . .” Id.; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Allegations in a petition that are vague, conclusory, or palpably incredible are subject to summary dismissal. Hendricks, 908 F.2d at 491.

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1 Further, the Court may dismiss a petition for writ of habeas corpus either on its own
2 motion under Habeas Rule 4, pursuant to the respondent's motion to dismiss, or after an answer
3 to the petition has been filed. Advisory Committee Notes to Habeas Rule 8, 1976 Adoption; see
4 Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001). However, a petition for habeas corpus
5 should not be dismissed without leave to amend unless it appears that no tenable claim for relief
6 can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

7 Here, petitioner is serving a sentence of 17 years to life in state prison based on his nolo
8 contendere plea to second degree murder in November of 1989. Petitioner claims that respondent
9 refuses to "obey and implement" the three judge court orders issued in the class actions of
10 Coleman v. Brown, 2:90-cv-0520 KJM DAD, and Plata v. Brown, C01-1351 THE. Further,
11 petitioner alleges that the decision of California's Board of Parole Hearings ("BPH"), made on
12 April 30, 2014, denying petitioner's request for advancement of his parole hearing, was arbitrary
13 and capricious.

14 First, alleged violations of orders issued in class actions must be raised within the class
15 action. If petitioner believes that prison officials are failing to abide by procedures established as
16 a result of such class actions, or violating court orders issued therein, he should raise such
17 concerns through counsel for the plaintiff class in such class actions.

18 Second, even if the class actions accomplished changes in procedures for the BPH,
19 individual determinations concerning parole still remain within the purview of the BPH. In other
20 words, the BPH retains jurisdiction over parole decisions. Thus, the BPH determines whether
21 petitioner is eligible for parole based on review of the suitability factors as applied to petitioner,
22 regardless of orders issued in the class actions referenced by petitioner.

23 Third, as to petitioner's claim regarding the BPH's denial of his request to advance his
24 next parole hearing, petitioner has not cited any federal authority demonstrating that he did not
25 receive the process he was due, if any, when the BPH denied his request. But in any event,
26 district courts in our circuit have consistently rejected claims advanced by state prisoners that the
27 BPH violates either federal law or any provision of the U.S. Constitution when it denies a petition
28 to advance parole hearings. See Johnson v. Duffy, 2014 WL 3956689 (E.D. Cal. Aug. 13, 2014)

1 (petitioner's challenge to the BPH's decision to deny his request to advance his next parole
2 hearing date fails to state a cognizable claim for federal habeas corpus relief); Saffold v. Hill,
3 2013 WL 6283893 at *1 (E.D. Cal. Dec.4, 2013) (same); Sardella-Lagomarsino v. Swarthout,
4 2013 WL 1628242 at *3 (E.D. Cal. Apr.15, 2013) ("if due process does not require an evidentiary
5 review of a decision denying parole . . . then there can be no due process right to an evidentiary
6 review of a decision denying a request to advance a suitability hearing."); Johnson v. Hartley,
7 2013 WL 440990 at *2 (E.D. Cal. Feb. 5, 2013) ("Although there are certain minimal procedural
8 due process protections implicated by a board's decision to deny parole as set forth in the
9 Supreme Court's decision in Swarthout v. Cooke, such decision does not apply to a board's
10 decision not to advance a parole hearing.") (internal citations omitted); Aranda v. Grounds, 2012
11 WL 5289401 at *2 (N.D. Cal. Oct.25, 2012) ("petitioner's claims that the Board violated his
12 federal right to due process in denying his application to advance his parole hearing are without
13 merit."); Charity v. Ochoa, 2012 WL 4471592 at *1 (E.D. Cal. June 15, 2012) ("petitioner's
14 challenge to the Board's decision not to hold his next parole hearing sooner involves only the
15 Board's compliance or non-compliance with state statutes and regulations governing the
16 scheduling of parole suitability hearings, so it does not present a federal question."). Such
17 decisions are persuasive on the issue and this case is no different than those which resulted in the
18 decisions cited above. Thus, petitioner fails to state a cognizable claim for federal habeas relief.

19 Finally, petitioner claims he is "illegally housed in an open dorm setting." (ECF No. 1 at
20 4.) However, such a claim concerns petitioner's conditions of confinement, not the fact or
21 duration of his conviction. Claims concerning conditions of confinement are not cognizable in a
22 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Thus, such claim must be raised
23 in a civil rights complaint under 42 U.S.C. § 1983.

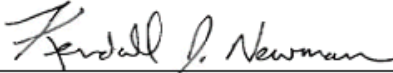
24 Therefore, IT IS HEREBY ORDERED that petitioner is granted leave to proceed in forma
25 pauperis; and

26 IT IS RECOMMENDED that the petition be dismissed for failure to state a cognizable
27 claim for federal habeas corpus relief.

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1 These findings and recommendations are submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
3 after being served with these findings and recommendations, petitioner may file written
4 objections with the court and serve a copy on all parties. Such a document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,
6 he shall also address whether a certificate of appealability should issue and, if so, why and as to
7 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
8 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §
9 2253(c)(3). Petitioner is advised that failure to file objections within the specified time may
10 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
11 1991).

12 Dated: April 30, 2015

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14 KENDALL J. NEWMAN
15 UNITED STATES MAGISTRATE JUDGE

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