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28UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY DOWNS,

Petitioner,

v.

JEFFREY BEARD,

Respondent.

No. 2:14-cv-3011-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court has reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Proceedings, and finds that it must be summarily dismissed. *See* Rule 4, Rules Governing § 2254 Cases (requiring summary dismissal of habeas petition if, upon initial review by a judge, it plainly appears “that the petitioner is not entitled to relief in the district court”).

Federal courts offer two main avenues to relief on complaints related to one’s imprisonment – a petition for habeas corpus pursuant to 28 U.S.C. § 2254, and a civil rights complaint pursuant to 42 U.S.C. § 1983. Challenges to the validity of one’s confinement or the duration of one’s confinement are properly brought in a habeas action, whereas requests for relief turning on the circumstances of one’s confinement are properly brought in a § 1983 action. *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)); *see also* 28 U.S.C. § 2254(a) (“[A] district court shall entertain an application for a writ

1 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only
2 on the ground that he is in custody in violation of the Constitution or laws or treaties of the United
3 States.”); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254 Cases.

4 Petitioner indicates that his petition concerns an upcoming parole suitability hearing and
5 his rights under the Americans with Disabilities Act and the Rehabilitation Act. ECF No. 1 at 1.
6 He requests the following: 1) counsel for his April 2015 parole suitability hearing; 2) copies of
7 his mental health records; 3) the opportunity to depose the Board of Parole Terms; 4) unspecified
8 discovery; and 5) an injunction against the Sacramento County Superior Court. *See generally id.*
9 Here, petitioner’s claims do not sound in habeas because they do not concern the validity or
10 duration of his confinement.

11 Accordingly, IT IS HEREBY ORDERED that petitioner’s application to proceed in forma
12 pauperis (ECF No. 3) is granted and the Clerk of the Court shall randomly assign this action to a
13 United States District Judge.

14 Further, it is HEREBY RECOMMENDED that this action be dismissed without prejudice
15 to filing a civil rights action pursuant to 42 U.S.C. § 1983.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
21 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
22 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
23 his objections petitioner may address whether a certificate of appealability should issue in the
24 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
25 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it
26 enters a final order adverse to the applicant).

27 Dated: March 11, 2015.

28 
EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE