

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN LAVELLE WALTON,
Petitioner,
v.
RONALD RACKLEY,
Respondent.

No. 2:15-cv-0013 CKD P

ORDER

Responde

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

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. Petitioner has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. 636(c).

In his petition, petitioner complains about information presented in a document titled “Comprehensive Risk Assessment for the Board of Parole Hearings” (CRA). Pet., Ex. A. The document is dated May 23, 2012. Id. at 14. Apparently the information included in the document was considered by the California Board of Parole Hearings when petitioner was

1 considered for parole in August of 2012. Pet. at 6“F.” Petitioner asks that the court order the
2 “CRA at issue . . . be expunged and removed from petitioner’s central file, mental health file and
3 order a new CRA without mention of the [Rules Violation Report]¹ and the psychological reports
4 dated from March 16, 2012 to August 2013.”

5 Generally speaking, a federal court entertains an application for writ of habeas corpus
6 filed by a state prisoner only if the prisoner alleges he is in custody in violation of federal law.
7 28 U.S.C. § 2254(a). The relief which may be granted is either release from prison or reduction
8 of sentence. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). Petitioner seeks neither release
9 from prison, nor a reduction of sentence and nothing suggests such relief is warranted.

10 Apparently, petitioner is under the impression that if the CRA at issue is removed from
11 consideration at his next parole hearing, his prospects for parole improve. However, he fails to
12 point to anything which reasonably suggests as much. Furthermore, in Swarthout v. Cooke, 131
13 S. Ct. 859 (2011), the Supreme Court found that prisoners being considered for parole under
14 California law have a right arising under the Due Process Clause of the Fourteenth Amendment to
15 be heard at their parole proceedings and to be provided with a statement of reasons for denial of
16 parole. Id. at 862. The Court specifically rejected the notion that there can be a valid claim under
17 the Fourteenth Amendment for insufficiency of evidence presented at a parole proceeding. Id. at
18 862-63. Since insufficiency of evidence presented at a parole proceeding is not a valid basis for
19 habeas relief, the court cannot grant habeas relief based upon inaccurate evidence being presented
20 at the hearing. Put another way, if the court has no reason to concern itself with whether the
21 evidence presented at a parole proceeding met a certain evidentiary threshold, the court has no
22 reason to concern itself with whether the evidence which was presented was misleading.²

23 ¹ A “Rules Violation Report” is a document used by California Department of Corrections and
24 Rehabilitation staff to charge an inmate with a violation of institutional rules. Petitioner asserts
25 the Rules Violation Report to which he refers above was never actually adjudicated.

26 ² The court notes that plaintiff has a right arising under California law to have any decision
27 denying him parole be supported by at least “some evidence.” In re Lawrence, 44 Cal.4th 1181,
28 1212 (2008). This implies that petitioner also has a right under California law to not have a
 denial of parole based upon evidence that is patently false. Petitioner’s avenue of recourse with
 respect to violations of California law lies within California’s courts because, as indicated above,

1 Because it is plain that petitioner is not entitled to any relief authorized in a federal habeas
2 action, petitioner's application for writ of habeas corpus will be summarily dismissed, and this
3 case will be closed.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Petitioner's request to proceed in forma pauperis (ECF No. 4) is granted;
- 6 2. Petitioner's petition for writ of habeas corpus is summarily dismissed;
- 7 3. This case is closed; and
- 8 4. The court declines to issue the certificate of appealability referenced in 28 U.S.C. §
9 2253.

10 Dated: February 5, 2015



11 CAROLYN K. DELANEY
12 UNITED STATES MAGISTRATE JUDGE

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28 federal habeas relief cannot be based upon a violation of state law. See 28 U.S.C. § 2254(a).