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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ALVIN WOOLEVER, JR.,
Petitioner,
v.
ROSARIO, et al.,
Respondents.

No. 2:15-cv-1457 AC P

ORDER

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

Petitioner has consented to the jurisdiction of the undersigned United States Magistrate Judge for all purposes, pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c). See ECF Nos. 6-7.

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, see ECF Nos. 2 & 5, is granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court is required to conduct a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. Pursuant to Rule 4, this court must summarily dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.”

Review of the instant petition indicates that petitioner is attempting to pursue a civil rights

1 action against three correctional officers for excessive force. See ECF No. 1 at 1, 5, 7, 12-5.

2 This court may entertain an application for writ of habeas corpus by a state prisoner only
3 on the ground that he is in custody in violation of federal law. See 28 U.S.C. § 2254(a). Because
4 the petition fails to allege that petitioner is in custody in violation of federal law, based on a
5 challenge to his underlying conviction or sentence, a writ of habeas corpus cannot issue in this
6 action. Therefore, petitioner's habeas petition must be dismissed.

7 Should petitioner wish to pursue his civil rights claims, he must do so in a newly-filed
8 action, together with a new request to proceed in forma pauperis, on the forms provided with this
9 order. Petitioner must submit the forms to the court as a new action, without reference to the
10 instant case or case number.


11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Petitioner's request for leave to proceed in forma pauperis, ECF Nos. 2 & 5, is granted;
- 13 2. The petition for writ of habeas corpus, ECF No. 1, is summarily dismissed;
- 14 3. This case is closed;
- 15 4. The court declines to issue the certificate of appealability referenced in 28 U.S.C.

16 §2253; and

17 5. As a courtesy to petitioner, the Clerk of Court is directed to send petitioner, together
18 with a copy of this order the forms used by prisoners in this district to request leave to proceed in
19 forma pauperis and to pursue a civil rights action pursuant to 42 U.S.C. § 1983. Should petitioner
20 wish to pursue his civil rights claims, he must do so in a newly-filed action on the forms provided
21 with this order, without reference to the instant case or case number.

22 DATED: September 21, 2015

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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