

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RYAN N. LANZAROTTA-LEEK,

Petitioner,

v.

SUPERIOR COURT OF NEVADA
COUNTY,

Respondent.

No. 2:15-cv-1501-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a county inmate proceeding without counsel on a petition for 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

1 (1973)); *see also* 28 U.S.C. § 2254(a) (“[A] district court shall entertain an application for a writ
2 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only
3 on the ground that he is in custody in violation of the Constitution or laws or treaties of the United
4 States.”); Advisory Committee Notes to Rule 1 of the Rules Governing § 2254 Cases.

5 In this case, petitioner alleges he suffers from AIDS/HIV and that he is being denied
6 adequate medical care. ECF No. 1. This habeas action must be summarily dismissed because
7 petitioner’s claims concern only the conditions of his confinement. They do not sound in habeas
8 because they do not concern the validity or duration of his confinement.¹

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly
10 assign a United States District Judge to this action.

11 Further, IT IS HEREBY RECOMMENDED that this action be dismissed.

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

23 Dated: September 23, 2015.

24 
25 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

26 _____
27 ¹ Petitioner has also filed a civil rights action based upon these same conditions of
28 confinement. *See Lanzarotta-Leek v. California*, No. 2:15-cv-1499-KJN (E.D. Cal.). If petitioner
wishes to pursue these allegations in federal court, he should proceed with the civil rights action
he has already commenced.