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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ROARK,  
Petitioner,  
v.  
RON RACKLEY,<sup>1</sup>  
Respondent.

No. 2:16-cv-0721 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner’s claims concern a revocation of parole occurring in 2011, and the terms imposed following the revocation. The term of parole at issue ended October 16, 2011. ECF No. 10-3 at 2, 4. Petitioner is currently serving an 8 year prison sentence entered upon a September 25, 2014 conviction for brining drugs into jail. Id. at 11-12. Respondent has filed a motion asking that petitioner’s habeas petition be dismissed.

The court can “entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of [federal law].” 28 U.S.C. § 2254. Petitioner fails to make any allegation suggesting,

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<sup>1</sup> Mr. Ron Rackley, the warden at petitioner’s place of incarceration, is hereby substituted for the Attorney General of California as the respondent in this matter. See Rule 2(a), Rules Governing Section 2255 Cases.

1 and nothing in the record before the court suggests, that the parole revocation at issue, or terms  
2 entered thereon, resulted in petitioner's present incarceration or contributed in any way to the  
3 length of his current sentence. Therefore, the court cannot "entertain" petitioner's § 2254  
4 petition.

5 In light of the foregoing, the court need not address respondent's argument that  
6 petitioner's claims are time-barred.

7 Accordingly, IT IS HEREBY RECOMMENDED that:

- 8 1. Respondent's motion to dismiss (ECF No. 10) be granted;
- 9 2. Petitioner's petition for writ of habeas corpus (ECF No. 1) be dismissed; and
- 10 3. This case be closed.

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

23 Dated: July 14, 2016

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26 CAROLYN K. DELANEY  
27 UNITED STATES MAGISTRATE JUDGE  
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