

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

COURTNEY J. CROSBY,

No. 2:16-CV-0767-JAM-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

WARDEN,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s petition for a writ of habeas corpus (Doc. 1).

Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the instant case, it is plain that petitioner is not entitled to federal habeas relief because petitioner’s claim is not cognizable.

///

///

1 When a state prisoner challenges the legality of his custody – either the fact of
2 confinement or the duration of confinement – and the relief he seeks is a determination that he is
3 entitled to an earlier or immediate release, such a challenge is cognizable in a petition for a writ
4 of habeas corpus under 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973);
5 see also Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49
6 F.3d 583, 586 (9th Cir. 1995) (per curiam). Where a prisoner challenges the conditions of
7 confinement, as opposed to the fact or duration of confinement, his remedy lies in a civil rights
8 action under 42 U.S.C. § 1983. See Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985); see
9 also Skinner v. Switzer, 131 S.Ct. 1289, 1298-99 n.13 (2011) (stating that “. . .when a prisoner’s
10 claim would not ‘necessarily spell speedier release,’ that claim does not lie at ‘the core of habeas
11 corpus’ and may be brought, if at all, under § 1983”). Any claim that does not necessarily
12 shorten an inmate’s incarceration, if successful, falls outside the scope of habeas jurisdiction.
13 See Blair v. Martel, 645 F.3d 1151, 1157-58 (9th Cir. 2011). Thus, 28 U.S.C. § 2254 cannot be
14 used to challenge the conditions of confinement, and 42 U.S.C. § 1983 cannot be used to
15 challenge the fact or duration of confinement.

16 Petitioner claims that her constitutional rights were violated when legal mail was
17 opened outside her presence. This claim relates to the conditions of petitioner’s confinement, not
18 the fact or duration or her confinement, and success on the merits would not necessarily shorten
19 petitioner’s incarceration. For these reasons, petitioner’s claim is not cognizable under § 2254.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 Based on the foregoing, the undersigned recommends that petitioner's petition for
2 a writ of habeas corpus (Doc. 1) be summarily dismissed.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court. Responses to objections shall be filed within 14 days after service of
7 objections. Failure to file objections within the specified time may waive the right to appeal.
8 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9
10 DATED: June 22, 2017

11 
12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26