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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NICHOLAS MARTIN CUMMINGS,  
Petitioner,  
v.  
PEOPLE OF CALIFORNIA,  
Respondent.

No. 2:16-cv-2572-EFB P

ORDER<sup>1</sup>

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>2</sup> 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. The court must summarily dismiss a petition if it “plainly appears . . . that the petitioner is not entitled to relief . . . .” The court has conducted the review required under Rule 4.

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<sup>1</sup> This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to petitioner’s consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

<sup>2</sup> Petitioner has filed an application for leave to proceed in forma pauperis. Examination of the in forma pauperis application reveals that he is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis is granted. *See* 28 U.S.C. § 1915(a).

1           Petitioner claims that the state court failed to properly apply all of his credits for time-  
2 served to his aggregate sentence of five years and eight-months. *See generally* ECF No. 4.  
3 Under 28 U.S.C. § 2254(a), this court can consider a petition for writ of habeas corpus by a  
4 person in state custody “only on the ground that he is in custody in violation of the Constitution  
5 [or other federal law].” Because there is no claim before the court that petitioner is in custody in  
6 violation of federal law, the court cannot entertain the instant petition. Therefore, the petition for  
7 a writ of habeas corpus must be summarily dismissed.

8           In accordance with the above, IT IS HEREBY ORDERED that:

- 9           1. Petitioner’s request for leave to proceed in forma pauperis (ECF No. 5) is granted.
- 10           2. Petitioner’s application for writ of habeas corpus (ECF No. 4) is summarily dismissed.

11 In an abundance of caution, petitioner is granted 30 days from the date of this order to file an  
12 amended petition. Any amended petition must be filed on the form employed by this court and  
13 must state all claims and prayers for relief on the form. It must bear the case number assigned to  
14 this action and must bear the title “Amended Petition.” Petitioner is cautioned that failure to file  
15 an amended petition pursuant to this order may result in the dismissal of this action.

16           3. The Clerk of the Court is directed to send petitioner the court’s form for application for  
17 writ of habeas corpus.

18 DATED: April 19, 2017.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE