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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH WAYNE MILLS,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION,

Respondent.

No. 2:17-cv-0873-JAM-EFB P

ORDER

Petitioner is a state prisoner without counsel. He filed this action as a “petition for writ of habeas corpus” concerning the denial of counsel at a competency hearing and various conditions of his confinement. ECF No. 1 at 5. He subsequently filed two “civil rights complaint[s] by a prisoner,” complaining about the denial of counsel “to fight [his] charges” and additional conditions of his confinement. ECF No. 8 at 3; ECF No. 12. In the civil rights complaint, he seeks \$18,000,000 for “illegal imprisonment.” *Id.* at 6.

It is not clear from these filings whether petitioner intends to pursue an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 or a civil rights complaint pursuant to 42 U.S.C. § 1983.¹ In addition, petitioner has not filed an in forma pauperis application or paid the

¹ 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

1 required filing fee (\$5.00 for a habeas action; \$400 for a civil action). *See* 28 U.S.C. §§ 1914(a);
2 1915(a). To proceed with this action, petitioner must pay the required filing fee or request leave
3 to proceed in forma pauperis and submit the affidavit and trust account statement required by 28
4 U.S.C. § 1915(a).

5 Accordingly, it is hereby ORDERED that:

- 6 1. Within 30 days from the date of this order, petitioner shall file an amended pleading
7 notifying the court whether he wishes to proceed with this matter as a habeas action or
8 a civil rights action. If the court receives no such guidance, this matter will proceed
9 on the initial habeas application filed by petitioner.
- 10 2. Petitioner has 30 days from the date of service of this order to submit either the filing
11 fee or the application required by § 1915(a).
- 12 3. The Clerk of the Court is directed to send petitioner the court's forms for an
13 application for writ of habeas corpus and for a civil rights complaint pursuant to 42
14 U.S.C. § 1983.
- 15 4. The Clerk of the Court is directed to mail to petitioner a form application for leave to
16 proceed in forma pauperis.
- 17 5. Failure to comply with this order may result in a recommendation that this action be
18 dismissed.

19 DATED: July 27, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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26 one's confinement are properly brought in a § 1983 action. *Muhammad v. Close*, 540 U.S. 749,
27 750 (2004) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973)). A prisoner's claim which, if
28 successful, would not necessarily lead to immediate or speedier release falls outside the "core of
habeas corpus" and must be pursued in an action brought pursuant to 42 U.S.C. § 1983. *Nettles v.*
Grounds, 830 F.3d 922 (9th Cir. 2016).