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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TREVOR NEIL RHONE,
Petitioner,
v.
BUTTE COUNTY JAIL,
Respondent.

No. 2:18-cv-0288-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is confined in the Butte County Jail. He has filed a petition for writ of habeas corpus, but the petition does not challenge his conviction or sentence. Rather, it alleges that jail officials have denied him necessary medical treatment for pain, digestive system problems, and a swollen neck. ECF No. 1 at 3. The court previously informed him that claims that would not necessarily lead to immediate or speedier release could not be brought in a habeas petition but must be pursued in a civil rights action under 42 U.S.C. § 1983. ECF No. 3. That order provided petitioner with 30 days in which to file a civil rights complaint or to stand on the petition. Petitioner failed to respond to the order; thus, the court presumes that petitioner wishes to go forward with the case as a habeas petition.

Unfortunately, as the court informed petitioner, claims that would not, if successful, lead to petitioner’s immediate or speedier release from confinement may not be brought via petition for writ of habeas corpus. *Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016). Petitioner’s

1 sole claim here – that he is being denied needed medical treatment – would not, if successful, lead
2 to petitioner’s immediate or speedier release from confinement. It may not therefore be pursued
3 as a habeas case, but must be dismissed without prejudice to petitioner pursuing the claim in a
4 civil rights action.

5 Accordingly, it is hereby ORDERED that the Clerk of Court randomly assign a United
6 States District Judge to this action. It is further RECOMMENDED that the petition be dismissed
7 without prejudice to petitioner pursuing his claim in a civil rights action.

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

20 Dated: March 14, 2019.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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