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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH BECKER,
Petitioner,
v.
HUNTER ANGLEA,
Respondent.

No. 2:18-cv-1849 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Examination of the request to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

Petitioner seeks an order directing officials at his prison to allow petitioner to receive a copy of his trial transcript from his appellate counsel. However, the relief available by way of a § 2254 petition is generally either immediate or earlier release from custody. E.g. Nettles v.

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1 Grounds, 830 F.3d 922, 935 (9th Cir. 2016). Because petitioner seeks neither, this § 2254 action
2 must be dismissed.¹

3 For these reasons, the court will recommend that petitioner’s petition for writ of habeas
4 corpus be summarily dismissed.

5 Accordingly, IT IS HERBY ORDERED that:

- 6 1. Petitioner’s request for leave to proceed in forma pauperis (ECF No. 2) is granted; and
- 7 2. The Clerk of the Court assign a district court judge to this case.

8 IT IS HEREBY RECOMMENDED that:

- 9 1. Petitioner’s petition for writ of habeas corpus be summarily dismissed; and
- 10 2. 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, petitioner may file written
14 objections with the court. Such a document should be captioned “Objections to Magistrate
15 Judge’s Findings and Recommendations.” In his objections petitioner may address whether a
16 certificate of appealability should issue in the event he files an appeal of the judgment in this
17 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
18 deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as
19 here, a habeas petition is dismissed on procedural grounds, a certificate of appealability “should
20 issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the
21 district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it
22 debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris
23 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484

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26 ¹ From his petition, it appears petitioner has already been informed that he cannot obtain the
27 relief he seeks in a § 2254 action, and it has been suggested that he commence an action under 42
28 U.S.C. § 1983. If plaintiff elects to file a complaint under 42 U.S.C. § 1983, he will have to
establish a violation of his Constitutional rights in order to obtain relief.

1 (2000)). Failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: July 31, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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