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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS JOSEPH MELGER,  
Petitioner,  
v.  
XAVIER BECERRA,  
Respondent.

No. 2:19-cv-0304 CKD P

ORDER AND FINDINGS &  
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.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. (ECF No. 2.) Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

I. Petition

Rule 4 of the Habeas Rules Governing Section 2254 Cases requires the court to summarily dismiss a habeas petition “[i]f it plainly appears from the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” As set forth below, the petition fails to state a cognizable claim for relief and will be dismissed.

The petition involves petitioner’s 2018 conviction for second degree burglary on a plea of no contest. (ECF No. 1 at 2.) Petitioner asserts that his conviction should be overturned because

1 the arresting officer violated his Fourth Amendment rights when he detained him without any  
2 reasonable suspicion that petitioner was involved in criminal activity. (Id. at 5-6.) However,  
3 “[o]nce a defendant pleads guilty he cannot raise independent claims of deprivation of  
4 constitutional rights that occurred prior to the entry of the guilty plea.” Marrow v. United States,  
5 772 F.2d 525, 527 (9th Cir. 1985) (citing Tollett v. Henderson, 411 U.S. 258, 266-67 (1973);  
6 Mayes v. Pickett, 537 F.2d 1080, 1081-82 (9th Cir. 1976)). Although petitioner in this case pled  
7 no contest, he is equally precluded “from challenging alleged constitutional violations that  
8 occurred prior to the entry of that plea.” Ortberg v. Moody, 961 F.2d 135, 137-38 (9th Cir. 1992)  
9 (citing Tollett, 411 U.S. at 266-67). Accordingly, petitioner fails to state a cognizable claim for  
10 habeas relief and the petition should be dismissed.

## 11 II. Certificate of Appealability

12 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must  
13 issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A  
14 certificate of appealability may issue only “if the applicant has made a substantial showing of the  
15 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

16 For the reasons set forth in these findings and recommendations, a substantial showing of  
17 the denial of a constitutional right has not been made in this case. Therefore, no certificate of  
18 appealability should issue.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Petitioner’s application to proceed in forma pauperis (ECF No. 2) is granted.
- 21 2. The Clerk of the Court shall randomly assign a United States District Judge to this  
22 action.

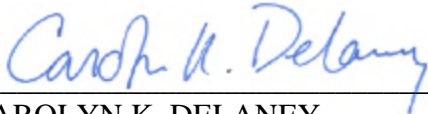
23 IT IS FURTHER RECOMMENDED that:

- 24 1. Petitioner’s application for a writ of habeas corpus be dismissed.
- 25 2. This court decline to issue the certificate of appealability referenced in 28 U.S.C.  
26 § 2253.

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, petitioner may file written  
2 objections with the court and serve a copy on all parties. Such a document should be captioned  
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Petitioner is advised that  
4 failure to file objections within the specified time may waive the right to appeal the District  
5 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: March 12, 2019

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9 CAROLYN K. DELANEY  
10 UNITED STATES MAGISTRATE JUDGE

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