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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN JOHN CRAIG,
Petitioner,
v.
JOHN DAGOSTINI,
Respondent.

No. 2:21-cv-1226 TLN KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a county prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner paid the filing fee. As discussed below, the petition should be dismissed without prejudice.

Governing Standards

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court. . . .” Id.

The Petition

Petitioner alleges the following. In ground one, unidentified parties are circumventing U.S. Mail, legal mail, confidential privileges, and violating Title 15 standards and U.S. Postal Service regulations. (ECF No. 1 at 3.) In ground two, certain correctional officers hold petitioner incommunicado, and deny petitioner his one hour out of cell time, which denies him showers,

1 phone calls, and contact with other inmates. Further, he alleges that his competency evaluation
2 by Judge Ralphs has resulted in petitioner's placement in ad seg disciplinary housing which
3 requires yellow clothing instead of orange, which petitioner contends is institutionalized
4 discrimination. (ECF No. 1 at 4.)

5 Federal Habeas Corpus vs. Civil Rights

6 As a general rule, a claim that challenges the fact or duration of a prisoner's confinement
7 should be addressed by filing a habeas corpus petition, while a claim that challenges the
8 conditions of confinement should be addressed by filing a civil rights action. Muhammad v.
9 Close, 540 U.S. 749, 750 (2004) (per curiam). Prisoners cannot obtain release from prison by
10 filing a § 1983 action. On the other hand, prisoners cannot obtain injunctive relief or damages
11 based on conditions of confinement claims by filing a habeas petition.

12 Discussion

13 A federal petition for habeas corpus under 28 U.S.C. § 2254 involves an attack on a
14 prisoner's conviction for which he is being held in custody, and petitioner must seek release from
15 his conviction because of a violation of the Constitution of the United States, or in the rare case, a
16 federal law, which applies to the state proceedings. While the court may address ancillary matters
17 to the petition, it is necessary that petitioner provide the basis for habeas jurisdiction in his
18 petition.

19 Here, petitioner's claims are more appropriately raised in a civil rights complaint under 42
20 U.S.C. § 1983 because such claims implicate petitioner's current conditions of confinement rather
21 than challenging his underlying criminal conviction.

22 In some circumstances, a district court may convert an improperly filed habeas petition
23 into a civil rights complaint. See Nettles v. Grounds, 830 F.3d 922, 935-36 (9th Cir. 2016) (en
24 banc). "If the complaint is amenable to conversion on its face, meaning that it names the correct
25 defendants and seeks the correct relief, the court may re-characterize the petition so long as it
26 warns the pro se litigant of the consequences of the conversion and provides an opportunity for
27 the litigant to withdraw or amend his or her complaint." Id. at 936 (quoting Glaus v. Anderson,
28 408 F.3d 382 (7th Cir. 2005)).

1 Here, petitioner has not named the appropriate parties responsible for the claims raised in
2 the instant petition. Petitioner names only El Dorado County and its sheriff as respondent, and
3 there is no indication that either was involved in the factual allegations pled. Fed. R. Civ. P. 10.

4 Second, if petitioner chooses to proceed with a civil rights action, he will be required to
5 pay the court's \$350.00 filing fee, even if granted leave to proceed in forma pauperis, although he
6 would be allowed to pay it in installments. See 28 U.S.C. §§ 1914(a), 1915(a). Moreover, if a
7 prisoner files a civil rights complaint that is later dismissed as frivolous or for failure to state a
8 cognizable civil rights claim, the prisoner sustains a strike under 28 U.S.C. § 1915(g). Once a
9 prisoner sustains three strikes under § 1915, the prisoner may be barred from bringing future civil
10 rights actions unless the prisoner meets a narrow exception under § 1915(g).

11 Finally, under the Prison Litigation Reform Act ("PLRA"), petitioner cannot pursue a
12 claim in this court that he has not exhausted through an inmate appeal procedure that is available
13 at his place of incarceration. See 42 U.S.C. § 1997e(a) ("No action shall be brought with respect
14 to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in
15 any jail, prison, or other correctional facility until such administrative remedies as are available
16 are exhausted."). Although exhaustion is not required "when circumstances render administrative
17 remedies 'effectively unavailable,'" Sapp v. Kimbrell, 623 F.3d 813, 822 (9th Cir. 2010) (citation
18 omitted), the Ninth Circuit requires "a good-faith effort on the part of inmates to exhaust a
19 prison's administrative remedies as a prerequisite to finding remedies effectively unavailable,"
20 Albino v. Baca, 697 F.3d 1023, 1035 (9th Cir. 2012). The exhaustion requirement accords
21 prisoners the possibility of obtaining more immediate and effective relief. The requirement
22 provides an opportunity for correctional officials to address complaints internally, thereby
23 deterring frivolous lawsuits and creating an administrative record should the matter later proceed
24 to court. See Porter v. Nussle, 534 U.S. 516, 525 (2002). "The primary purpose of a grievance . .
25 . is to alert the prison to a problem and facilitate its resolution, not to lay groundwork for
26 litigation." Griffin v. Arpaio, 557 F.3d 1117, 1120 (9th Cir. 2009).

27 For all of the above reasons, it is not appropriate to convert this action to a civil rights
28 action.

1 Leave to Amend

2 The undersigned has considered whether to recommend granting petitioner leave to
3 amend. However, because it is inappropriate to convert this action to a civil rights action, the
4 undersigned declines to grant petitioner leave to file an amended civil rights complaint in this
5 action.


6 Accordingly, IT IS HEREBY ORDERED that the October 8, 2021 findings and
7 recommendations (ECF No. 9) are vacated; and

8 Further, IT IS RECOMMENDED that petitioner's application for a writ of habeas corpus
9 be dismissed without prejudice.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
12 being served with these findings and recommendations, petitioner may file written objections
13 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
14 and Recommendations." If petitioner files objections, he shall also address whether a certificate
15 of appealability should issue and, if so, why and as to which issues. A certificate of appealability
16 may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the
17 denial of a constitutional right." 28 U.S.C. § 2253(c)(3). Petitioner is advised that failure to file
18 objections within the specified time may waive the right to appeal the District Court's order.

19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: November 4, 2021

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22 _____
23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE

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