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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM KIRKPATRICK JR,

No C-09-1564 VRW (PR)

Petitioner,

v

ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS

R WONG, WARDEN

Respondent.

(Doc ## 2, 4 & 5)

_____ /

William Kirkpatrick, Jr, a state prisoner at San Quentin State Prison ("SQSP"), recently filed several motions under a closed case number, C-08-1393 VRW (PR); these new claims pertain to the conditions of his confinement at SQSP. Specifically, petitioner complained about the handling of his meal trays by SQSP personnel. Petitioner denominated his initial pleading in C-08-1393 VRW (PR) as a habeas proceeding.

On April 14, 2009, the court dismissed without prejudice petitioner's motions subject to him filing a civil rights complaint under 42 USC section 1983. To date, petitioner has not filed a civil rights complaint.

1 On April 9, 2009, petitioner filed a new petition for writ
2 of habeas corpus, C-09-1564 VRW (PR), referencing the allegations
3 contained in the motions he filed under closed case number C-08-1393
4 VRW (PR) pertaining to the conditions of his confinement at SQSP.
5 Doc #1. The court notified petitioner in writing at that time that
6 the action was deficient because he did not pay the requisite filing
7 fee or, instead, submit a signed and completed court-approved in
8 forma pauperis application, including a completed certificate of
9 funds in the prisoner's account and a copy of the prisoner's trust
10 account statement for the last six months. See 28 USC § 1915(a)(2).
11 Petitioner was advised that failure to file the requested items
12 within thirty days would result in dismissal of the action. Doc #2.


13 Over forty days have elapsed since petitioner was notified
14 of his filing deficiency; however, he has not provided the court
15 with the requisite items, or sought an extension of time to do so.
16 Petitioner has, however, continued to file pleadings that appear to
17 allege violations of his civil rights based on the conditions of his
18 confinement. See Doc ## 4, 5, 6, 7 & 8. Although the Supreme Court
19 has not addressed whether a challenge to a condition of confinement
20 may be brought under habeas, see Bell v Wolfish, 441 US 520, 526 n6
21 (1979), the Ninth Circuit has held that habeas jurisdiction is
22 absent, and a section 1983 action is proper, where, as here, a
23 successful challenge to a prison condition will not necessarily
24 shorten the prisoner's sentence. See Ramirez v Galaza, 334 F3d 850,
25 859 (9th Cir 2003); see also Badea v Cox, 931 F2d 573, 574 (9th Cir
26 1991) (civil rights action is proper method of challenging
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1 conditions of confinement); Crawford v Bell, 599 F2d 890, 891-92 &
2 n1 (9th Cir 1979) (affirming dismissal of habeas petition on basis
3 that challenges to terms and conditions of confinement must be
4 brought in civil rights complaint).

5 Under these circumstances, the petition for writ of habeas
6 corpus is DISMISSED. Petitioner is reminded that the proper vehicle
7 for challenging the conditions of his confinement at SQSP is by way
8 of a civil rights complaint under 42 USC section 1983. Petitioner
9 is further advised that he must exhaust California's prison
10 administrative remedies before filing a civil rights complaint under
11 section 1983. See 42 USC § 1997e(a). His unexhausted claims cannot
12 proceed otherwise. See id. Furthermore, petitioner must pay the
13 full filing fee to initiate a civil rights proceeding (\$ 350.00) or
14 submit a fully completed application to proceed in forma pauperis.

15 The clerk shall close the file and terminate all pending
16 motions as moot.

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18 IT IS SO ORDERED.

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22 _____
23 VAUGHN R WALKER
24 United States District Chief Judge

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