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

GREGORY C. STOCKMAN,)
)
 Plaintiff,)
)
 v.)
)
 EDWARD FOULK, Executive)
 Director, Napa State Hospital,)
)
 Defendant.)
 _____)

No. C 09-3453 MMC (PR)

**ORDER DENYING RECONSIDERATION;
DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

(Docket Nos. 10, 11, 12)

On July 27, 2009, plaintiff, an insanity acquittee incarcerated at Napa State Hospital and proceeding pro se, filed the above titled civil rights action pursuant to 42 U.S.C. § 1983. In his complaint, plaintiff alleges he was denied his right to a restoration of sanity trial pursuant to California Penal Code section 1026.2, and, in particular, that he was denied a restoration of sanity trial even though he met the prerequisites for such, specifically, his participation in an outpatient conditional release program for at least one year. See Cal. Pen. Code §§ 1026.2(e), (f). Plaintiff seeks injunctive relief in the form of a restoration of sanity trial to determine his eligibility for release.

On October 19, 2009, the Court dismissed the complaint without leave to amend, for failure to state a cognizable claim for relief under 42 U.S.C. § 1983. In that regard, the Court liberally construed plaintiff's allegations as a claim that the denial of a jury trial on the question of whether plaintiff met the criteria for release from confinement constituted a

1 violation of his due process right not to be confined without periodic review of his mental
2 condition and dangerousness. As so construed, the Court found plaintiff failed to state a
3 claim for relief, because plaintiff had received all of the process to which he was due. In
4 particular, plaintiff had received review of his request to be provided a restoration of sanity
5 hearing, a determination had been made that he did not meet the criteria for such hearing
6 because he was not currently participating in a conditional release program, and plaintiff had
7 appealed that determination and been informed he could apply for another hearing in one
8 year. Further, the Court determined that, to the extent plaintiff alleged the state courts
9 wrongly determined plaintiff was not entitled to a restoration of sanity trial, such allegation
10 failed to state a claim for relief under § 1983 because a federal district court is a court of
11 original jurisdiction and does not have subject matter jurisdiction to review state court
12 decisions.

13 1. Motion for Reconsideration

14 Plaintiff moves for reconsideration of the Court's order of dismissal, on the ground he
15 is attempting to challenge not only the state's application of California Penal Code § 1026.2,
16 but also the constitutionality of said statute. Although plaintiff makes no argument herein in
17 support of the latter assertion, a review of the instant complaint shows plaintiff, in a notice of
18 appeal filed in the Superior Court after his petition for release from confinement was denied,
19 argued the statute is unconstitutional because it allows an insanity acquittee's continued
20 confinement if he is unable to prove either that he is no longer mentally ill or no longer
21 dangerous. To the extent plaintiff's argument can be construed as one that such requirement
22 violates due process, plaintiff is mistaken. The United States Supreme Court has held due
23 process requires that a state not continue to confine an insanity acquittee unless he is both
24 dangerous and mentally ill. See Foucha v. Louisiana, 504 U.S. 71, 77 (1992). Under
25 § 1026.2, continued confinement of an insanity acquittee is allowed only if he would pose a
26 danger due to mental disease, defect or disorder. Cal. Pen. Code § 1026.2(e). Consequently,
27 under the statute, and in accord with Foucha, an insanity acquittee may be continuously
28 confined only if he is both dangerous and mentally ill. See Hartman v. Summers, 878 F.

1 Supp. 1335, 1342 (C.D. Cal. 1995).

2 Based on the above, plaintiff's argument that California Penal Code § 1026.2 violates
3 due process is without merit, and the motion for reconsideration will be denied.

4 2. Motion for Appointment of Counsel

5 Plaintiff moves for the appointment of counsel. As the instant action is closed and
6 reconsideration will not be granted, plaintiff's motion will be denied.

7 **CONCLUSION**


8 For the reasons stated above the Court orders as follows:

- 9 1. Plaintiff's motion for reconsideration is hereby DENIED.
10 2. Plaintiff's motion for the appointment of counsel is hereby DENIED.

11 This order terminates Docket Nos. 10, 11 and 12.

12 IT IS SO ORDERED.

13 DATED: August 3, 2010

14 
15 MAXINE M. CHESNEY
16 United States District Judge