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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT BENYAMINI,

No. C 12-4313 SI (pr)

Petitioner,

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

v.

G. D. LOUIS, warden,

Respondent.

Robert Benyamini, formerly a prisoner at Pelican Bay State Prison, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge a disciplinary decision at that prison. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts.

The petition alleges that Benyamini was not guilty of the disciplinary offense of assault on a peace officer not likely to cause serious harm. The petition fails to state a claim for habeas relief because it does not allege the violation of Benyamini's rights under the "Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Federal habeas relief is unavailable for violations of state law or for alleged error in the interpretation or application of state law. *See Swarthout v. Cooke*, 131 S. Ct. 859, 861-62 (2011).

Leave to amend will be granted so that Benyamini may attempt to allege a claim for a violation of his rights under the Constitution, laws or treaties of the United States. In preparing

1 his amended petition, Benyamini also should bear in mind that this court cannot consider a claim
2 unless state court remedies have been exhausted for that claim. The exhaustion requirement
3 means that he must present each and every claim to the California Supreme Court in a petition
4 for review or in a habeas petition to give that court a fair opportunity to rule on the merits of it
5 before this court can consider the claim.

6 For the foregoing reasons, the petition is dismissed with leave to file an amended petition
7 no later than **November 9, 2012**. The amended petition should have this case caption and case
8 number on the first page and should be clearly marked "Amended Petition." Failure to file the
9 amended petition by the deadline will result in the dismissal of this action.

10 The clerk will update the docket to reflect that Benyamini is now housed at the
11 Atascadero State Hospital, P.O. Box 7001, Atascadero, CA 93423. Benyamini is cautioned that
12 he must inform this court (as well as any other court in which he has an action pending) every
13 time his address changes.

14 Benyamini's *in forma pauperis* application is DENIED because he has sufficient funds
15 to pay the \$5.00 filing fee. No later than **November 9, 2012**, Benyamini must pay the \$5.00
16 filing fee. Failure to pay the fee by the deadline will result in the dismissal of this action.

17 IT IS SO ORDERED.

18 DATED: October 9, 2012



SUSAN ILLSTON
United States District Judge

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