IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY MITCHELL,

No. C 10-02082 SBA (PR)

Petitioner,

Respondent.

ORDER OF DISMISSAL

v.

14 B. CURRY,

B. Corner,

This action was opened when Petitioner, who is proceeding <u>prose</u>, filed a completed habeas corpus form; therefore, it was opened as a habeas action. He also seeks leave to proceed <u>in forma</u> pauperis.

Petitioner claims that on November 4, 2008, he filed a temporary restraining order (TRO) in the Monterey County Superior Court relating to prison officials denying him access to the courts. He alleges that the state superior court is "in contempt of its rules of court by not responding to its own rules to answer the TRO." (Pet. at 6.) It seems that Petitioner is asking this Court to compel, or issue mandamus to, the state superior court to take action. Federal district courts are without power to issue mandamus to direct state courts, state judicial officers or other state officials in the performance of their duties. A petition for a writ of mandamus to compel a state court or official to take or refrain from some action is frivolous as a matter of law. Demos v. U.S. District Court, 925 F.2d 1160, 1161-62 (9th Cir. 1991); see Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1966) (attorney contested disbarment and sought reinstatement); Dunlap v. Corbin, 532 F. Supp. 183, 187

1	(D. Ariz. 1981) (plaintiff sought order from federal court directing state court to provide speedy
2	trial), aff'd without opinion, 673 F.2d 1337 (9th Cir. 1982); Newton v. Poindexter, 578 F. Supp. 277,
3	279 (C.D. Cal. 1984) (federal mandamus statute has no application to state officers or employees);
4	see also In re Campbell, 264 F.3d 730, 731-32 (7th Cir. 2001) (denying petition for writ of
5	mandamus that would order state trial court to give petitioner access to certain trial transcripts which
6	he sought in preparation for filing state post-conviction petition; federal court may not, as a general
7	rule, issue mandamus to a state judicial officer to control or interfere with state court litigation).
8	Petitioner's claim is not cognizable in federal court. His remedy, if any, lies in state
9	court. Because amendment would be futile, this action is DISMISSED with prejudice.
10	CONCLUSION
11	For the foregoing reasons, the Court orders as follows:
12	The action is DISMISSED with prejudice and without leave to amend. Petitioner's
13	application to proceed in forma pauperis is GRANTED.
14	The Clerk of the Court shall terminate all pending motions, enter judgment and close the file.
15	This Order terminates Docket no. 4.
16	IT IS SO ORDERED.
17	DATED: 8/26/10 SAUNDRA BROWN ARMSTRONG
18	United States District Judge
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1	UNITED STATES DISTRICT COURT		
2	FOR THE		
3	NORTHERN DISTRICT OF CALIFORNIA		
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5	5		
6	6 GREGORY MITCHELL, Case Number: CV1	0-02082 SBA	
7	7 Plaintiff, CERTIFICATE C	OF SERVICE	
8	8 v.		
9	9 BENNY CURRY et al,		
10	Defendant.		
11	11		
12	I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.		
13	That on August 26, 2010, I SERVED a true and correct copy(ies) of the attached, by placing so copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle		
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18	Gregory Mitchell D-44205 Correctional Training Facility		
19	P.O. Box 689 Soledad, CA 93960		
20	Dated: August 26, 2010 Richard W. Wieking, Clerk		
21		y Clerk	
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 $G:\ \ PRO-SE\ SBA\ HC.10\ Mitchell 2082. Dismiss. w \ pd$