

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

3  
4 VICENTE FRANCISCO LOPEZ,

No. C 10-4734 CW

5                                    Plaintiff,

ORDER GRANTING  
DEFENDANT'S MOTION  
TO DISMISS

6                                    v.

7 GREG LEWIS,

8                                    Defendant.

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11                                    Respondent Greg Lewis, Acting Warden of Pelican Bay State  
12 Prison (PBSP), moves to dismiss Petitioner Vincent Lopez's  
13 petition for a writ of habeas corpus on the grounds that the  
14 petition fails to invoke federal habeas corpus jurisdiction and is  
15 barred by the one-year statute of limitations and by the principle  
16 of procedural default. Petitioner opposes the motion and  
17 Respondent has filed a reply. The matter was taken under  
18 submission and decided on the papers. Having considered all the  
19 papers filed by the parties, the Court grants the motion to  
20 dismiss.  
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22                                    BACKGROUND

23                                    On July 20, 2007, Petitioner was removed from the general  
24 population and placed in administrative segregation because he was  
25 suspected of committing battery on another inmate with a weapon.  
26 On October 4, 2007, Petitioner appeared before Senior Hearing  
27 Officer Lt. G.A. Kelley for a disciplinary hearing regarding the  
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1 July 20, 2007 incident. Petitioner alleges that, at the  
2 disciplinary hearing, he was not allowed to call witnesses to  
3 testify on his behalf, even though he had requested that they be  
4 present. Petitioner claims that Respondent violated his  
5 Fourteenth Amendment right to due process by denying him the  
6 opportunity to present witnesses at his hearing.

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8 On December 25, 2009, Petitioner filed a petition for a writ  
9 of habeas corpus in the Del Norte County superior court. On  
10 February 26, 2010, the court denied the petition on the ground  
11 that Petitioner failed to raise his claims in a timely fashion and  
12 did not show that his delay was justified or that it fell within  
13 an exception to the timeliness bar. In re Lopez, On Habeas  
14 Corpus, HCPB09-5251. On March 18, 2010, the California court of  
15 appeal denied Petitioner's petition for a writ of habeas corpus  
16 and, on September 15, 2010, the California Supreme Court denied  
17 the petition, citing In re Robbins, 18 Cal. 4th 770, 780 (1998).

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19 DISCUSSION

20 I. Cognizable Habeas Claim

21 Respondent argues that, because Petitioner was sentenced to  
22 life without the possibility of parole, see Respondent's Ex. A,  
23 abstract of state court judgment, his disciplinary proceeding did  
24 not extend the duration of his time in custody and, thus, this  
25 Court lacks jurisdiction to adjudicate his claim.

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27 A federal court may entertain a habeas petition from a state  
28 prisoner "only on the ground that he is in custody in violation of

1 the Constitution or laws or treaties of the United States." 28  
2 U.S.C. § 2254(a). In Preiser v. Rodriguez, the Supreme Court  
3 addressed the intersection between 42 U.S.C.  
4 § 1983 and writs of habeas corpus and held that "when a state  
5 prisoner is challenging the very fact or duration of his physical  
6 confinement," and where "the relief he seeks is a determination  
7 that he is entitled to immediate release or a speedier release  
8 from that imprisonment," the prisoner's "sole federal remedy is a  
9 writ of habeas corpus." 411 U.S. 475, 500 (1973). Conversely, "a  
10 § 1983 action is a proper remedy for a state prisoner who is  
11 making a constitutional challenge to the conditions of his prison  
12 life, but not to the fact or length of his custody." Id. at 499.  
13 Habeas jurisdiction is absent where a successful challenge to a  
14 prison condition will not necessarily shorten the prisoner's  
15 sentence. Ramirez v. Galaza 334 F.3d 850, 859 (9th Cir. 2003).

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18       Petitioner argues that he is not seeking a shorter sentence,  
19 but seeks release from solitary confinement to the general  
20 population with full privileges. Petitioner argues that the  
21 relief he requests, release from solitary confinement, is  
22 sufficient to provide this Court with habeas jurisdiction over his  
23 petition. Petitioner is incorrect. A release from solitary  
24 confinement may make his incarceration more pleasant, but it will  
25 not reduce the duration of his confinement, which is a  
26 prerequisite for federal habeas jurisdiction. If Petitioner feels  
27 his constitutional rights are violated by the conditions of his  
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1 confinement, he may file a civil rights complaint under 42 U.S.C.  
2 § 1983, if he is able properly to exhaust his administrative  
3 remedies and meet the applicable statute of limitations.

4 Because the Court lacks jurisdiction over this petition,  
5 Respondent's motion to dismiss is granted. Dismissal is without  
6 leave to amend because amendment would be futile, but without  
7 prejudice to refile as a § 1983 claim. Because the Court lacks  
8 jurisdiction over this petition, it need not address Respondent's  
9 additional arguments for dismissal. The Clerk of the Court shall  
10 close this case.  
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13 IT IS SO ORDERED.  
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15 Dated: 3/13/2012

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17 CLAUDIA WILKEN  
18 United States District Judge  
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