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

KENNETH LEE TAYLOR,	)	No. C 12-05225 EJD (PR)
Plaintiff,	)	ORDER OF DISMISSAL
vs.	)	
MATTHEW CATE, et al.,	)	
Defendants.	)	

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Plaintiff, a state prisoner at Pelican Bay State Prison, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff original complaint was dismissed with leave to amend and Plaintiff has filed an amended complaint.

**DISCUSSION**

**A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be  
2 liberally construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.  
3 1988).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
5 elements: (1) that a right secured by the Constitution or laws of the United States was  
6 violated, and (2) that the alleged violation was committed by a person acting under the  
7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 **B. Plaintiff’s Claims**

9 Plaintiff states that he was denied access to the courts and his inmate appeals were  
10 improperly denied. Plaintiff states that in his habeas case, Taylor v. Ayers, No. C 07-  
11 04147 MMC, prison staff hindered his ability to litigate the case as he was only provided  
12 one and a half hours in the law library to file a Certificate of Appealability (“COA”),  
13 which was insufficient and as a result the COA was denied. Court records indicate that  
14 Plaintiff had already been provided an extension and the COA Plaintiff filed was 61 pages  
15 with another 131 pages of exhibits and was quite extensive. (Docket No. 32, Taylor v.  
16 Ayers, No. C 07-04147 MMC.) The Court found Petitioner’s arguments to be  
17 unpersuasive and denied the COA. (Docket No. 36, Taylor v. Ayers, No. C 07-04147  
18 MMC.) The Ninth Circuit also denied the request for a COA. (Docket No. 49, Taylor v.  
19 Ayers, No. C 07-04147 MMC.) Plaintiff also argues he was not allowed a copy of all 192  
20 pages of the COA for his own records, only the first 100 pages. Plaintiff states he needed  
21 a complete copy for his next parole board hearing.

22 Prisoners have a constitutional right of access to the courts. See Lewis v. Casey,  
23 518 U.S. 343, 350 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977).<sup>1</sup> To establish a  
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25 <sup>1</sup> The constitutional source of the right of access to the courts is not settled. See Christopher  
26 v. Harbury, 536 U.S. 403, 413-14 & 415 n.12 (2002); Lewis v. Casey, 518 U.S. 343, 366-67  
27 (1996) (Thomas, J., concurring). Supreme Court decisions have grounded the right in the Article  
28 IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth  
Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due  
Process Clauses. Christopher, 536 U.S. at 415 n.12 (citing cases). The Ninth Circuit also has

1 claim for any violation of the right of access to the courts, the prisoner must prove that  
2 there was an inadequacy in the prison's legal access program that caused him an actual  
3 injury. See Lewis, 518 U.S. at 350-55. To prove an actual injury, the prisoner must show  
4 that the inadequacy in the prison's program hindered his efforts to pursue a non-frivolous  
5 claim concerning his conviction or conditions of confinement. See id. at 354-55.  
6 Plaintiff is also informed there is no constitutional right to a prison administrative appeal  
7 or grievance system. See Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003); Mann v.  
8 Adams, 855 F.2d 639, 640 (9th Cir. 1988).

9 Plaintiff has failed to demonstrate an actual injury regarding the denial of his  
10 COA. He was provided an extension by the court and was able to file an extensive and  
11 well reasoned COA. That he wanted more time to research and the COA was denied does  
12 not show an actual injury. Nor does only being allowed to copy 100 pages of the 192  
13 COA for use at his parole hearing show an injury. Plaintiff states the COA was needed to  
14 demonstrate that his crime was not as violent as it appeared. Yet, a parole hearing is not  
15 the venue to be challenging his underlying conviction nor is it clear why he needed the  
16 entire 192 page COA to present his arguments. As Plaintiff's ability to litigate his case  
17 was not hindered, in that he was able to file the COA, the complaint will be dismissed.  
18 As Plaintiff has already been provided an opportunity to amend, and as it is clear that  
19 further amendment would be futile, this case is dismissed without leave to amend. See  
20 Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000).

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25 found various constitutional sources for the right. See, e.g., Cornett v. Donovan, 51 F.3d 894,  
26 897 (9th Cir. 1995) (right grounded in due process and equal protection clauses); Bradley v.  
27 Hall, 64 F.3d 1276, 1279 (9th Cir. 1995) (use of prison grievance procedure protected by  
28 prisoner's right to meaningful access to courts along with broader right to petition government  
for redress of grievances); see also Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th  
Cir. 1989) (nonprisoner case finding right of access to courts subsumed under 1st Amendment).

1 **CONCLUSION**

2 For the foregoing reasons, the complaint is DISMISSED without leave to amend.

3  
4 DATED: 2/14/2013

  
5 EDWARD J. DAVILA  
6 United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

KENNETH LEE TAYLOR,  
Plaintiff,

Case Number CV 12-05225 EJD (PR)

v.

**CERTIFICATE OF SERVICE**

MATTHEW CATE, et al.,  
Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 2/15/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

**Kenneth Lee Taylor**  
J-89634  
SHU D9-12 / Low  
Pelican Bay State Prison  
PO Box 7500  
Crescent City, CA 95532

DATED: 2/15/2013

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk