

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

JOSEPH KEEL,) No. C 13-3536 LHK (PR)
Petitioner,) ORDER OF DISMISSAL
v.)
WARDEN R.T.C. GROUNDS,)
Respondent.)

Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. For the reasons state below, the petition is DISMISSED.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hedges*, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the

1 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

2 **B. Petitioner’s Claims**

3 Petitioner argues that the trial court violated his rights by imposing restitution before
4 considering whether petitioner had any ability to pay it. However, because this claim does not
5 go to the fact or length of petitioner’s incarceration, it is not a proper ground for federal habeas
6 relief.

7 The federal habeas statute does not provide jurisdiction over a claim challenging a
8 restitution order, even when the petitioner is incarcerated. *Bailey v. Hill*, 599 F.3d 976, 980 (9th
9 Cir. 2010). In *Bailey*, the petitioner pleaded guilty and was ordered to pay restitution. He filed a
10 section 2254 petition alleging that his counsel provided ineffective assistance by not objecting to
11 the restitution order. The Ninth Circuit affirmed the dismissal of the petition on the ground that
12 the petitioner did not meet section 2254’s “in custody” requirement for jurisdiction. *Id.* The
13 Ninth Circuit concluded that section 2254 does not confer jurisdiction over a state prisoner’s
14 in-custody challenge to the non-custodial portion of his criminal sentence, such as a restitution
15 order. *Id.* at 981.

16 Here, petitioner challenges only the restitution fine imposed. Petitioner does not allege
17 that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28
18 U.S.C. § 2254. Petitioner does not claim that his custody or conviction is unlawful. Thus, this
19 court lacks jurisdiction to consider petitioner’s challenge to the restitution order imposed by the
20 trial court.

21 **CONCLUSION**

22 The instant habeas petition is DISMISSED.

23 The federal rules governing habeas cases brought by state prisoners require a district
24 court that denies a habeas petition to grant or deny a certificate of appealability (“COA”) in its
25 ruling. *See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254*. Petitioner has
26 not shown “that jurists of reason would find it debatable whether the petition states a valid claim
27 of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
28 Accordingly, a COA is DENIED.

1 The Clerk shall close the file.

2 IT IS SO ORDERED.

3 DATED: 10/3/13

Lucy H. Koh

4 LUCY H. KOH
5 United States District Judge