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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SHAWN JAMES ALLEN
WOODALL,

Petitioner,

vs.

SHERIFF WILLIAM KOLENDER,

Respondent.

CASE NO. 07-CV-1583 H (AJB)

**ORDER DISMISSING
HABEAS PETITION
WITHOUT PREJUDICE,
DENYING MOTION TO
EXPEDITE PROCEEDINGS
AS MOOT, AND DENYING
MOTION TO PROCEED IN
FORMA PAUPERIS AS
MOOT**

On August 9, 2007, Petitioner Shawn James Allen Woodall, a state prisoner proceeding pro se, submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, together with a motion to proceed in forma pauperis. (Doc. Nos. 1 & 2.) Further, Petitioner submitted a motion asking the Court to expedite the proceedings. (Doc. No. 3.) For the reasons set forth below, the Court **DISMISSES** the petition without prejudice. Therefore, the Court **DENIES** Petitioner's motion to expedite proceedings as moot and **DENIES** Petitioner's motion to proceed in forma pauperis as moot.

Analysis

1. Sua Sponte Review

A complaint filed by a prisoner seeking redress from a governmental entity or

1 an employee of a governmental entity is subject to a mandatory and sua sponte review
2 and dismissal by the Court to the extent it is “frivolous, malicious, or fails to state a
3 claim upon which relief may be granted; or seeks monetary relief against a defendant
4 immune from such relief.” 28 U.S.C. § 1915A(b)(1) & (2).

5 “[W]hen determining whether a complaint states a claim, a court must accept as
6 true all allegations of material fact and must construe those facts in the light most
7 favorable to the plaintiff.” Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000)
8 (applying same standard for dismissal under § 1915A as applied to analyzing motion
9 to dismiss under Fed. R. Civ. P. 12(b)(6)). Under Fed. R. Civ. P. 12(b)(6), a complaint
10 should not be dismissed for failure to state a claim unless it appears beyond a doubt
11 that the plaintiff could prove no set of facts in support of his or her claim for relief. See
12 Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Bautista v. Los Angeles County, 216
13 F.3d 837, 842 (9th Cir. 2000). Conclusory allegations of law, however, are insufficient
14 to defeat a motion to dismiss. Epstein v. Washington Energy Co., 83 F.3d 1136, 1140
15 (9th Cir. 1996). Courts grant 12(b)(6) relief only where a plaintiff’s complaint lacks
16 a “cognizable legal theory” or sufficient facts to support a cognizable legal theory.
17 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990) (as amended).

18 Additionally, Rule 1(b) of the Rules Governing Section 2254 Cases provides that
19 “[i]n applications for habeas corpus in cases not covered by subdivision (a), these rules
20 may be applied at the discretion of the United States district court.” The Court
21 therefore also has discretion to apply the Rules Governing Section 2254 Cases to
22 petitioner’s habeas corpus action filed pursuant to 28 U.S.C. § 2241. Accordingly, the
23 Court may also dismiss the petition under this Rule “[i]f it plainly appears from the face
24 of the petition and any exhibits annexed to it that the petitioner is not entitled to relief.”
25 Rule 4, Rules Governing Section 2254 Cases.

26 **2. Habeas Review under 28 U.S.C. §§ 2241 & 2254**

27 Both 28 U.S.C. § 2241 and 28 U.S.C. § 2254 contain similar statutory language.
28 Section 2241 provides jurisdiction for a district court to issue a writ of habeas corpus

1 when a federal or state prisoner establishes that he “is in custody in violation of the
2 Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a) and (c)(3).
3 Similarly, § 2254 confers jurisdiction on a district court to issue “a writ of habeas
4 corpus in behalf of a person in custody pursuant to the judgment of a State court . . . on
5 the ground that he is in custody in violation of the Constitution or laws or treaties of
6 the United States.” 28 U.S.C. § 2254(a).

7 As explained by the Ninth Circuit, § 2254 implements the general grant of
8 habeas corpus authority in § 2241, so long as the person is in custody pursuant to the
9 judgment of a state court. White v. Lambert, 370 F.3d 1002, 1006 (9th Cir. 2004). In
10 contrast, 28 U.S.C. § 2241 is “properly understood as a general grant of habeas
11 authority that provides federal court jurisdiction to a state prisoner when that prisoner
12 is not in custody pursuant to a ‘state court judgment.’” White, 370 F.3d at 1006.

13 Here, Petitioner has filed his petition under § 2241, but he is in prison according
14 to the judgment of a state court, and he must challenge the validity or length of his
15 detention through a petition under § 2254. Nevertheless, as discussed below, because
16 Petitioner does not challenge the length or validity or his confinement, his claims are
17 not cognizable on habeas review under either statute.

18 **3. Petitioner’s Claims Are Not Cognizable on Habeas Corpus Review**

19 While challenges to the fact or duration of confinement are brought by petition
20 for a writ of habeas corpus, challenges to conditions of confinement are brought
21 pursuant to the Civil Rights Act, 42 U.S.C. § 1983. See Preiser v. Rodriguez, 411 U.S.
22 475, 488-500. “[W]hen a state prisoner is challenging the very fact or duration of his
23 physical imprisonment, and the relief he seeks is a determination that he is entitled to
24 immediate release or a speedier release from that imprisonment, his sole federal remedy
25 is a writ of habeas corpus.” Id. at 500. On the other hand, a § 1983 action is a proper
26 remedy for a state prisoner who is making a constitutional challenge to the conditions
27 of his prison life, but not to the fact or length of his custody. Id. at 499. In short,
28 “habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge

1 to a prison condition will not necessarily shorten the prisoner's sentence." Ramirez v.
2 Galaza, 334 F.3d 850, 859 (9th Cir. 2003), cert. denied, 541 U.S. 1063 (2004).

3 Upon review of the petition, habeas corpus is not the proper vehicle for
4 Petitioner's claims because they arise out of Petitioner's complaints about the
5 conditions of his life in prison and have no bearing on the length or validity of his
6 incarceration. Petitioner claims that the Sheriff's Department has failed to provide him
7 with pen, paper, and stamps, that it has refused to make photocopies, that it has a policy
8 that restricts inmates from assisting one another with the preparation of legal
9 documents, and that it improperly handles legal mail. (Pet. at 2.) Although he argues
10 that his claims are cognizable on habeas review, as Petitioner notes, he challenges the
11 conditions of his confinement. (Id. at 5.) Petitioner's claims are not cognizable on
12 habeas review because a ruling in his favor would not affect the validity or duration of
13 his confinement. See Preiser, 411 U.S. at 500; Ramirez, 334 F.3d at 859. Accordingly,
14 the Court **DISMISSES** the petition without prejudice for failing to state a claim
15 cognizable on habeas review. Therefore, the Court **DENIES** Petitioner's motion to
16 expedite proceedings as moot and **DENIES** Petitioner's motion to proceed in forma
17 pauperis as moot.

18 **4. Application of 28 U.S.C. § 1915(g)**

19 Additionally, to the extent Petitioner wishes to file any § 1983 action in the
20 future, the Court notes that he has filed several previous § 1983 actions that courts have
21 found frivolous, malicious, or failed to state a claim.¹ Woodall v. U.S. Marshall Svc.,
22 S.D. Cal. Case No. 01-CV-0179 BTM (LAB) (dismissing complaint as frivolous
23 pursuant to 28 U.S.C. § 1915A); Woodall v. Trujillo, S.D. Cal. Case No. 01-CV-0004
24 BTM (CGA) (dismissing complaint as frivolous pursuant to 28 U.S.C § 1915A);
25 Woodall v. Imperial County Sheriff, S.D. Cal. Case No. 00-CV-2584 JM (LSP)
26 (dismissing complaint for failing to state claim pursuant to § 1915A).

27
28 ¹ A court "may take notice of proceedings in other courts, both within and
without the federal judicial system, of those proceedings have a direct relation to
matters at issue." United States v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992).

1 Under 28 U.S.C. § 1915(g), a prisoner's right to proceed in forma pauperis is
2 limited if the prisoner accumulates three "strikes":

3 In no event shall a prisoner bring a civil action or appeal a judgment in a
4 civil action or proceeding under this section if the prisoner has, on 3 or
5 more prior occasions, while incarcerated or detained in any facility,
6 brought an action or appeal in a court of the United States that was
dismissed on the grounds that it is frivolous, malicious, or fails to state a
claim upon which relief may be granted, unless the prisoner is under
imminent danger of serious physical injury.

7 Accordingly, in a subsequent § 1983 action, a court found that Petitioner could not
8 proceed in forma pauperis. Woodall v. Ashcroft, S.D. Cal. Case No. 02-CV-1714 IEG
9 (RBB) (ruling that Petitioner had accumulated more than three strikes pursuant to 28
10 U.S.C. § 1915(g) and that he could not proceed in forma pauperis). Therefore, absent
11 allegations that he is in danger of serious physical injury, Petitioner must pay the entire
12 filing fee if he wishes to file any § 1983 action.

13 **Conclusion**

14 Based on the foregoing, the Court **DISMISSES** this case without prejudice for
15 failure to state a claim cognizable on habeas corpus review. Accordingly, the Court
16 **DENIES** Petitioner's motion to expedite proceedings as moot and **DENIES**
17 Petitioner's motion to proceed in forma pauperis as moot.

18 Additionally, if Petitioner wishes to bring a civil complaint pursuant to 42 U.S.C.
19 § 1983, he must file a new case. Further, absent imminent danger of serious physical
20 injury, he must pay the civil filing fee and comply with all procedural requirements.

21 **IT IS SO ORDERED.**

22 DATED: August 20, 2007

23 
24 MARILYN L. HUFF, District Judge
25 UNITED STATES DISTRICT COURT
26
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28 Copies To:
All Parties of Record