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

ALLEN LYNN JEFFRIES,

Petitioner,

v.

L. S. McEWEN, Warden,

Respondent.

Civil No. 10-2379 MMA (AJB)

**ORDER DENYING IN FORMA  
PAUPERIS APPLICATION AND  
DISMISSING CASE WITHOUT  
PREJUDICE**

On November 8, 2010, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a) in the Eastern District of California. On November 18, 2010, the case was transferred to this Court.

**APPLICATION TO PROCEED IN FORMA PAUPERIS**

The request to proceed in forma pauperis is denied because Petitioner has not provided the Court with sufficient information to determine Petitioner’s financial status. A request to proceed in forma pauperis made by a state prisoner must include a certificate from the warden or other appropriate officer showing the amount of money or securities Petitioner has on account

1 in the institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2. Petitioner has failed to  
2 provide the Court with the required Prison Certificate.

3 **FAILURE TO STATE A COGNIZABLE FEDERAL CLAIM**

4 Additionally, in accordance with Rule 4 of the rules governing § 2254 cases, Petitioner  
5 has failed to allege that his state court conviction or sentence violates the Constitution of the  
6 United States.

7 Title 28, United States Code, § 2254(a), sets forth the following scope of review for  
8 federal habeas corpus claims:

9 The Supreme Court, a Justice thereof, a circuit judge, or a district  
10 court shall entertain an application for a writ of habeas corpus in  
11 behalf of a person in custody pursuant to the judgment of a State  
12 court only on the ground that he is in custody in violation of the  
13 Constitution or laws or treaties of the United States.

12 28 U.S.C. § 2254(a) (emphasis added). See Hernandez v. Ylst, 930 F.2d 714, 719 (9th Cir.  
13 1991); Mannhalt v. Reed, 847 F.2d 576, 579 (9th Cir. 1988); Kealohapauole v. Shimoda, 800  
14 F.2d 1463, 1464-65 (9th Cir. 1986). Thus, to present a cognizable federal habeas corpus claim  
15 under § 2254, a state prisoner must allege both that he is in custody pursuant to a “judgment of  
16 a State court,” and that he is in custody in “violation of the Constitution or laws or treaties of the  
17 United States.” See 28 U.S.C. § 2254(a).

18 Here, Petitioner claims that he suffered a “falsified rules violation report,” “lost [sic] of  
19 credit,” and “denied pay.” (Pet. at 4-7.) In no way does Petitioner claim he is “in custody in  
20 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254.

21 Further, the Court notes that Petitioner cannot simply amend his Petition to state a federal  
22 habeas claim and then refile the amended petition in this case. He must exhaust state judicial  
23 remedies before bringing his claims via federal habeas. State prisoners who wish to challenge  
24 their state court conviction must first exhaust state judicial remedies. 28 U.S.C. § 2254(b), (c);  
25 Granberry v. Greer, 481 U.S. 129, 133-34 (1987). To exhaust state judicial remedies, a  
26 California state prisoner must present the California Supreme Court with a fair opportunity to  
27 rule on the merits of every issue raised in his or her federal habeas petition. See 28 U.S.C.  
28 § 2254(b), (c); Granberry, 481 U.S. at 133-34. Moreover, to properly exhaust state court judicial

1 remedies a petitioner must allege, in state court, how one or more of his or her federal rights  
2 have been violated. The Supreme Court in Duncan v. Henry, 513 U.S. 364 (1995) reasoned:  
3 “If state courts are to be given the opportunity to correct alleged violations of prisoners’ federal  
4 rights, they must surely be alerted to the fact that the prisoners are asserting claims under the  
5 United States Constitution.” Id. at 365-66 (emphasis added). For example, “[i]f a habeas  
6 petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due  
7 process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal  
8 court, but in state court.” Id. (emphasis added).

9 Additionally, the Court cautions Petitioner that under the Antiterrorism and Effective  
10 Death Penalty Act of 1996 (Act), signed into law on April 24, 1996, a one-year period of  
11 limitation shall apply to a petition for a writ of habeas corpus by a person in custody pursuant  
12 to the judgment of a State court. The limitation period shall run from the latest of:

13 (A) the date on which the judgment became final by the  
14 conclusion of direct review or the expiration of the time for seeking  
such review;

15 (B) the date on which the impediment to filing an application  
16 created by State action in violation of the Constitution or laws of the  
United States is removed, if the applicant was prevented from filing  
by such State action;

17 (C) the date on which the constitutional right asserted was  
18 initially recognized by the Supreme Court, if the right has been  
newly recognized by the Supreme Court and made retroactively  
19 applicable to cases on collateral review; or

20 (D) the date on which the factual predicate of the claim or  
21 claims presented could have been discovered through the exercise  
of due diligence.

22 28 U.S.C. § 2244(d)(1)(A)-(D) (West Supp. 2002).

23 The Court also notes that the statute of limitations does not run while a properly filed state  
24 habeas corpus petition is pending. 28 U.S.C. § 2244(d)(2); see Nino v. Galaza, 183 F.3d 1003,  
25 1006 (9th Cir. 1999), cert. denied, 529 U.S. 1104 (2000). But see Artuz v. Bennett, 531 U.S. 4,  
26 8 (2000) (holding that “an application is ‘properly filed’ when its delivery and acceptance [by  
27 the appropriate court officer for placement into the record] are in compliance with the applicable  
28 laws and rules governing filings.”). However, absent some other basis for tolling, the statute of

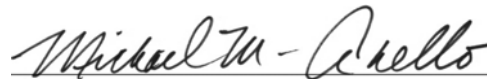
1 limitations does run while a federal habeas petition is pending. Duncan v. Walker, 533 U.S. 167,  
2 181-82 (2001).

3 **CONCLUSION**

4 Accordingly, the Court **DENIES** the request to proceed in forma pauperis, and  
5 **DISMISSES** this action without prejudice because Petitioner has failed to state a cognizable  
6 federal claim. To have the case reopened, Petitioner must, **no later than February 1, 2011**,  
7 provide the Court with: (1) a copy of this Order together with the \$5.00 filing fee; OR (2) a  
8 copy of this Order together with adequate proof that Petitioner cannot pay the \$5.00 filing fee,  
9 AND a First Amended Petition that cures the pleading deficiencies set forth above. *The Clerk*  
10 *of the Court is directed to send Petitioner a blank Application to Proceed In Forma Pauperis*  
11 *and a blank First Amended Petition form.*

12  
13 **IT IS SO ORDERED.**

14  
15 DATED: November 30, 2010



16 Hon. Michael M. Anello  
17 United States District Judge