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

RICHARD J. STANLEY, Petitioner, v. D. ASUNCION, Warden, Respondent.

Case No. 17cv1553 GPC (WVG)

**ORDER: (1) GRANTING
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND
(2) DISMISSING CASE WITHOUT
PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

REQUEST TO PROCEED IN FORMA PAUPERIS

Along with his Petition, Petitioner submitted a copy of his prison trust account statement, which this Court liberally construes as a request to proceed in forma pauperis. Petitioner has \$0.03 on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the above-referenced action without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

1 **FAILURE TO STATE A COGNIZABLE CLAIM**

2 Nonetheless, the Petition must be dismissed without prejudice, in accordance with
3 Rule 4 of the rules governing § 2254 cases, because Petitioner has failed to allege that his
4 state court conviction or sentence violates the Constitution of the United States.

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

7 The Supreme Court, a Justice thereof, a circuit judge, or a
8 district court shall entertain an application for a writ of habeas
9 corpus in behalf of a person in custody pursuant to the judgment
10 of a State court only on the ground that he is in custody in
11 violation of the 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
13 Cir. 1991); *Mannhalt v. Reed*, 847 F.2d 576, 579 (9th Cir. 1988); *Kealohapauole v.*
14 *Shimoda*, 800 F.2d 1463, 1464-65 (9th Cir. 1986). Thus, to present a cognizable federal
15 habeas corpus claim under § 2254, a state prisoner must allege both that he is in custody
16 pursuant to a “judgment of a State court,” and that he is in custody in “violation of the
17 Constitution or laws or treaties of the United States.” *See* 28 U.S.C. § 2254(a). Upon
18 review of the Petition, it appears to the Court that a Petition for Writ of Habeas Corpus
19 brought pursuant to § 2254 is not the proper vehicle for the claims Petitioner presents.
20 Petitioner seeks only to have this Court order the state court to provide him with the trial
21 transcripts related to his 1994 conviction in San Diego Superior Court. Petitioner’s claim
22 is not cognizable on habeas because it challenge the constitutional validity or duration of
23 Petitioner’s confinement. *See* 28 U.S.C. § 2254(a); *Preiser v. Rodriguez*, 411 U.S. 475,
24 500 (1973); *Heck v. Humphrey*, 512 U.S. 477, 480-85 (1994). “Section 2254 applies only
25 to collateral attacks on state court judgments.” *McGuire v. Blubaum*, 376 F. Supp. 284,
26 285 (D. Ariz. 1974).

27 In no way does Petitioner he challenge the fact or duration of his conviction, nor
28 does he claim his state court conviction violates the Constitution or laws or treaties of the

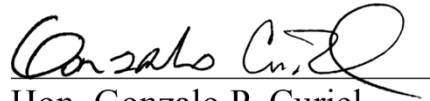
1 United States. Rule 4 of the Rules Governing Section 2254 Cases provides for summary
2 dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any
3 exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Rule 4,
4 28 U.S.C. foll. § 2254. Here, it is plain from the petition that Petitioner is not presently
5 entitled to federal habeas relief because he has not alleged that the state court violated his
6 federal rights.

7 **CONCLUSION**

8 Based on the foregoing, the Court **GRANTS** Petitioner’s request to proceed in
9 forma pauperis and **DISMISSES** the Petition without prejudice.

10 **IT IS SO ORDERED.**

11 Dated: August 9, 2017

12 
13 Hon. Gonzalo P. Curiel
14 United States District Judge