

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JIMMY EARL DOWNS,)
4)
5 Petitioner,) Case No.: 2:10-cv-01444-GMN-PAL
6 vs.)
7) **ORDER**
8 WARDEN BRIAN WILLIAMS, et al.,)
9)
10 Respondents.)
11)
12)
13)
14)

15 Petitioner has submitted a petition for writ of habeas corpus pursuant to
16 28 U.S.C. § 2254 (ECF No. 1). Petitioner has also now paid the \$5.00 filing fee for the petition
17 (ECF No. 5). The Court has reviewed the petition and finds that it must be DISMISSED, as it
18 fails to raise a claim subject to review under section 2254. See Rules Governing Section 2254
19 Cases, Rule 4.

20 **I. Discussion**

21 Petitioner attacks the validity of prison disciplinary proceedings in which he was charged
22 and found guilty of sexual harassment, and was sanctioned with 180 days in disciplinary
23 segregation. The sanction was served between November 29, 2009 and May 23, 2010. The
24 federal habeas statute gives the United States district courts jurisdiction to entertain petitions for
25 habeas relief only from persons who are “in custody in violation of the Constitution or laws or
treaties of the United States.” 28 U.S.C. § 2241(c)(3) (emphasis added); see also 28 U.S.C. §
2254(a). That statutory language has been interpreted as requiring that the habeas petitioner be
“in custody” under the conviction or sentence under attack at the time his petition is filed. See
Carafas v. LaVallee, 391 U.S. 234, 238, 88 (1968); see also *Maleng v. Cook*, 490 U.S. 488,
490-491 (1989). The petition must be dismissed as petitioner has already served the “sentence”

