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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 DAVID ALLEN HAWKINS,

9 Petitioner,

10 v.

11 MARGARET GILBERT,

12 Respondent.

CASE NO. C16-5007 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 13), and
15 Petitioner David Hawkins’s (“Hawkins”) objections to the R&R (Dkt. 14).

16 On November 30, 2015, Hawkins filed a habeas petition under 28 U.S.C. § 2254
17 seeking relief from the restitution portion of his judgment and sentence. Dkt. 4. On May
18 12, 2016, Judge Strombom issued the R&R recommending the Court deny the habeas
19 petition because the Court lacks jurisdiction. Dkt. 13. Specifically, Judge Strombom
20 concluded that Hawkins’s petition does not satisfy § 2254’s “in custody” requirement
21 because he seeks relief from his financial obligations rather than release from custody.
22 *Id.* On June 10, 2016, Hawkins filed objections. Dkt. 14.

1 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge's
2 recommended disposition. Rule 72(b) provides:

3 The district judge must determine de novo any part of the magistrate
4 judge's disposition that has been properly objected to. The district judge
5 may accept, reject, or modify the recommended disposition; receive further
6 evidence; or return the matter to the magistrate judge with instructions.

7 Fed. R. Civ. P. 72(b)(3).

8 The majority of Hawkins's objections concern the merits of his habeas petition.
9 See Dkt. 14. The Court, however, may not consider the merits of Hawkins's petition if it
10 lacks jurisdiction. See *Bailey v. Hill*, 599 F.3d 976, 978 (9th Cir. 2010) ("Section
11 2254(a)'s 'in custody' requirement is jurisdictional and therefore 'it is the first question
12 [the Court] must consider.'" (quoting *Williamson v. Gregoire*, 151 F.3d 1180, 1182 (9th
13 Cir. 1998)).

14 With respect to whether the Court has jurisdiction, Hawkins argues he is
15 challenging the "conditions" of his confinement and therefore satisfies § 2254's "in
16 custody" requirement. Dkt. 14 at 3–4. Although Hawkins is in physical custody, his
17 habeas petition only challenges his order of restitution, which is insufficient to confer
18 jurisdiction on the Court. See *Bailey*, 599 F.3d at 980. Specifically, Hawkins argues that
19 the Department of Corrections has illegally imposed an additional period of
20 "supervision," but Hawkins does not contest the custody portion of any period of that
21 alleged additional supervision. Dkt. 14 at 2–4. Accordingly, the Court lacks jurisdiction
22 to consider the merits of his petition.

1 The Court having considered the R&R, Hawkins's objections, and the remaining
2 record, does hereby find and order as follows:

- 3 (1) The R&R is **ADOPTED**;
- 4 (2) The petition for writ of habeas corpus is **DENIED**;
- 5 (3) The issuance of a certificate of appealability is **DENIED**; and
- 6 (2) This action is **DISMISSED**.

7 Dated this 18th day of July, 2016.

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BENJAMIN H. SETTLE
United States District Judge