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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 DARREL PATRICK WILLIS,

11 Plaintiff,

12 v.

13 NICK KISER,

14 Defendant.

CASE NO. 3:17-CV-05373-BHS-JRC

ORDER TO SHOW CAUSE OR
AMEND

15
16 Plaintiff Darrel Patrick Willis, proceeding *pro se*, filed this civil rights complaint under
17 42 U.S.C. § 1983.

18 Plaintiff alleges he was unlawfully jailed three separate times for violations of his
19 community custody, even though he had allegedly completed his community custody sentence.
20 Dkt. 5. He filed this suit, claiming monetary damages for losses he incurred while jailed.
21 However, his claim, if found in plaintiff's favor, would necessarily invalidate a sentence not yet
22 shown to be unlawful, which would not be the proper subject of a 1983 complaint. Further,
23 though he cites to the First Amendment, plaintiff has not pled a legitimate constitutional
24 violation. Having reviewed and screened plaintiff's Complaint under 28 U.S.C. § 1915A, the

1 Court declines to serve the Complaint, but provides plaintiff leave to file an amended pleading
2 by September 1, 2017, to cure the deficiencies identified below.

3 **BACKGROUND**

4 Plaintiff claims he was sentenced to one year of community custody in August 2014. Dkt.
5 5 at 3. He states that he finished that sentence on August 29, 2015. *Id.* He claims that, despite
6 this, defendant Nick Kiser arrested him for violation of his community custody in September
7 2015. *Id.* After a full hearing, he was sentenced to 25-30 days incarceration. *Id.* He claims that
8 the Department of Corrections altered his sentence without informing him, and that because of
9 this incarceration, he lost his apartment, his security deposit, and all his possessions. *Id.* He
10 further alleges that he was arrested and jailed twice more, in November 2015 and May 2016. *Id.*
11 After his third alleged violation, plaintiff was transferred to Grays Harbor County Jail on a
12 warrant for an offense stemming from his first arrest in 2015. *Id.* He asks the Court to grant him
13 monetary damages calculated according to his actual losses and to the number of days he was
14 allegedly unlawfully detained. *Id.* at 4.

15 **DISCUSSION**

16 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
17 complaints brought by prisoners seeking relief against a governmental entity or officer or
18 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
19 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
20 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
21 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
22 152 F.3d 1193 (9th Cir. 1998).

1 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he
2 suffered a violation of rights protected by the Constitution or created by federal statute, and (2)
3 the violation was proximately caused by a person acting under color of state law. *See Crumpton*
4 *v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is to identify the
5 specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994). To
6 satisfy the second prong, a plaintiff must allege facts showing how individually named
7 defendants caused, or personally participated in causing, the harm alleged in the complaint. *See*
8 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

9 Plaintiff's Complaint suffers from deficiencies requiring dismissal if not corrected in an
10 amended complaint.

11 **I. Challenge to Lawfulness of Incarceration – Heck Bar**

12 Plaintiff alleges that his constitutional rights were violated when, after full hearings, he
13 was wrongfully imprisoned three times for violating his community custody even though he had
14 completed his community custody sentence. However, a civil rights complaint under § 1983
15 cannot proceed when “a judgment in favor of the plaintiff would necessarily imply the invalidity
16 of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff
17 can demonstrate that the conviction or sentence has already been invalidated.” *Heck v.*
18 *Humphrey*, 512 U.S. 477, 487 (1994). The § 1983 action “is barred (absent prior invalidation) --
19 no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's
20 suit (state conduct leading to conviction or internal prison proceedings) -- if success in that
21 action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson v.*
22 *Dotson*, 544 U.S. 74, 81-82 (2005). To obtain federal judicial review of a state conviction or
23 sentence, a party must file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and
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1 must first exhaust his state judicial remedies. *See Preiser v. Rodriguez*, 411 U.S. 475, 500
2 (1973).

3 Here, a finding in favor of plaintiff’s 1983 claims would necessarily invalidate his arrest
4 and imprisonment. Thus, plaintiff is calling into question his convictions for violations of
5 community custody and his confinements as a result of those convictions. The wrong he
6 describes is jail time for violating his community custody even though he had completed his
7 community custody sentence. Dkt. 5 at 3. He requests monetary damages calculated to recoup
8 money and possessions lost during his confinement. *Id.* at 4. To find in plaintiff’s favor would be
9 a finding that his incarceration was unlawful. A federal 1983 action cannot be heard if it would
10 necessarily invalidate a conviction or sentence. *Heck*, 512 U.S. at 487. Before plaintiff can
11 recover in a 1983 action for damages caused by an unlawful incarceration, he must first
12 demonstrate the incarceration was unlawful by exhausting his state remedies and filing a petition
13 for habeas corpus. *Preiser*, 411 U.S. at 500.

14 **II. First Amendment Claim**

15 As noted above, plaintiff is calling into question his convictions for violations of his
16 community custody. However, plaintiff alleges that his unlawful incarceration was a violation of
17 his First Amendment rights. Dkt. 5 at 4. He does not explain how his First Amendments rights
18 were violated and this does not appear to be the case based on his alleged facts.

19 The First Amendment protects from government interference an individual’s freedom of
20 speech, freedom of religion, freedom of press. U.S. CONST. amend. I. Though prisoners retain
21 their constitutional rights while incarcerated, that “does not mean that these rights are not subject
22 to restrictions and limitations.” *Bell v. Wolfish*, 441 U.S. 520, 545-46 (1970) (internal quotations
23 omitted). If a prison restricts a prisoner’s First Amendment rights, this Court must consider
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1 whether the challenged restriction was “reasonably related to legitimate penological interests.”
2 *Turner v. Safley*, 482 U.S. 78, 89 (1987).

3 Here, plaintiff does not plead any facts that give rise to a First Amendment claim. He
4 states that because of this incarceration, he lost his apartment, his security deposit, and all of his
5 possessions. *Id.* However, even if true, these facts do not allege that anybody restricted any of his
6 First Amendment rights. Without demonstrating facts amounting to a constitutional violation,
7 plaintiff cannot establish a 1983 claim. The Court declines to serve the complaint until plaintiff
8 files an amended complaint including facts, if possible, that give rise to a constitutional violation.

9 **III. Due Process**

10 Plaintiff twice alleges that the Department of Corrections changed the length of his
11 community custody. Dkt. 5 at 3. He further alleges that this change in sentence occurred without
12 due process and that, therefore, his arrest for a violation of community custody was
13 unconstitutional. Although it is not entirely clear, plaintiff also appears to claim that a prosecutor
14 later confirmed to Judge Edwards that plaintiff was not on probation when he was picked up for
15 the first community custody violation and that an unrelated charge to his current claim was,
16 therefore, dismissed. *See id.* at 5. Plaintiff may be attempting to plead a due process violation,
17 but has not named an party responsible for such actions or presented facts sufficient to establish
18 such a claim.

19 A due process claim will only succeed if a plaintiff can prove both a constitutional
20 violation and that the party charged with the violation is “a person who may fairly be said to be a
21 state actor.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). Similarly, 42 U.S.C. §
22 1983 applies to the actions of “persons” acting under color of state law. Neither a state nor a state
23 agency is a “person” for purposes of § 1983. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990)

1 (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989)). To state an appropriate
2 claim, plaintiff must allege facts showing how individually named defendants caused, or
3 personally participated in causing, the harm alleged in the complaint. *See Arnold v. IBM*, 637
4 F.2d 1350, 1355 (9th Cir. 1981).

5 Here, plaintiff has failed to name any individual who caused the unlawful alteration of his
6 sentence. Dkt. 5 at 3. Instead, he indicates it was caused by “DOC,” an entity that is not a
7 “person” for purposes of § 1983. *Id.* Therefore, he must either amend his complaint to comply
8 with the standard or show cause why his complaint should not be dismissed.

9 **IV. Instructions to Plaintiff**

10 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
11 amended complaint containing a short, plain statement telling the Court: (1) the constitutional
12 right plaintiff believes was violated; (2) the name of the people or entity who violated the right;
13 (3) exactly what the individual did or failed to do; (4) how the action or inaction of all
14 individuals is connected to the violation of plaintiff’s constitutional rights; and (5) what specific
15 injury Plaintiff suffered because of the individual’s conduct. *See Rizzo v. Goode*, 423 U.S. 362,
16 371–72, 377 (1976). However, the Court will not address his complaint if judgment in his favor
17 would necessarily invalidate a conviction or sentence. *Heck*, 512 U.S. at 487. To recover for an
18 unlawful incarceration, the plaintiff must first prove its unlawfulness by successfully presenting
19 a habeas petition after exhausting all available state remedies. However, plaintiff should be
20 aware that monetary damages are not available when filing a habeas corpus petition, and be that
21 habeas corpus relief in federal court cannot be pursued until he has exhausted his state remedies.

22 If plaintiff wishes to proceed with an amended complaint alleging specific facts
23 comprising a § 1983 claim, plaintiff shall present the amended complaint on the § 1983 form
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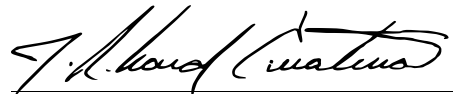
1 provided by the Court. The amended complaint must be legibly rewritten or retyped in its
2 entirety, it should be an original and not a copy, it should contain the same case number, and it
3 may not incorporate any part of the original complaint by reference. The amended complaint will
4 act as a complete substitute for the original Complaint, and not as a supplement. The Court will
5 screen the amended complaint to determine whether it contains factual allegations linking each
6 defendant to the alleged violations of plaintiff's rights. The Court will not authorize service of
7 the amended complaint on any defendant who is not specifically linked to a violation of
8 plaintiff's rights.

9 **CONCLUSION**

10 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
11 raised herein **on or before September 1, 2017**, the Court will recommend dismissal of this
12 action.

13 The Clerk is directed to send plaintiff the appropriate forms for filing a habeas corpus
14 petition and a 42 U.S.C. § 1983 civil rights complaint. The Clerk is further directed to send
15 copies of this Order and Pro Se Instruction Sheet to plaintiff.

16
17 Dated this 7th day of August, 2017.

18 

19 J. Richard Creatura
20 United States Magistrate Judge