

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 CYRUS PLUSH,

11 Petitioner,

12 v.

13 WASHINGTON STATE,

14 Respondent.

CASE NO. 3:20-CV-5258-BHS-DWC

ORDER

15 The District Court has referred this action to United States Magistrate Judge David W.  
16 Christel. Petitioner filed “Notice of Appeal” and Motion requesting this Court order the State of  
17 Washington to send copies of his court documents and appoint counsel, which the Clerk’s Office  
18 construed as a proposed federal Habeas Corpus Petition pursuant to 28 U.S.C. § 2254.<sup>1</sup> Dkt. 1.  
19 Plaintiff also challenges his right of access to the courts. *See id.* Having reviewed the pleading, the  
20 Court declines to order Respondent to file an answer as the Petition does not comply with the  
21

22  
23 <sup>1</sup> Petitioner also filed a Motion for Leave to Proceed *In Forma Pauperis*. Dkt. 6. However, it is not clear if  
24 Petitioner will be able to cure the deficiencies of his Petition, and therefore will not rule on the request to proceed *in forma pauperis* until Petitioner has filed an amended petition.

1 Rules Governing Section 2254 Cases. The Court, however, provides Petitioner leave to file an  
2 amended petition by July 6, 2020 to cure the deficiencies identified herein.

### 3 DISCUSSION

4 Petitioner, who is currently housed at Coyote Ridge Corrections Center, filed a Motion  
5 requesting the Court order the State of Washington send copies of his briefs, appoint counsel,  
6 stop legal documents from being thrown away, provide envelopes and access to the law library,  
7 stop having legal mail returned, and provide a proper paper and pen. Dkt. 1 at 2. Petitioner cites to  
8 a Washington State Supreme Court case in which it appears his petition for review was denied.  
9 Dkt. 1 at 1 (citing Case No. 95872-6 “review denied”). Petitioner does not appear to seek release  
10 from custody from this Court. *See id.*

11 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court must promptly  
12 examine the petition, and “[i]f it plainly appears from the petition and any attached exhibits that  
13 the petitioner is not entitled to relief in the district court, the judge must dismiss the petition.”

#### 14 I. Writ of Mandamus

15 If Petitioner is seeking a writ of mandamus to compel a Washington State court to send  
16 copies of his briefs/transcripts and appoint counsel, this claim is frivolous. A district court has  
17 the authority to issue all writs, including writs of mandamus, which are “necessary or appropriate  
18 in aid of their respective jurisdictions and agreeable to the usages and principals of law.” 28  
19 U.S.C. § 1651(a). Section 1651(a) does not provide a federal district court with the power to  
20 compel performance of a state court, judicial officer, or another state official’s duties under any  
21 circumstances. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). A petition  
22 for mandamus to compel a state official or agency to take or refrain from some action is  
23 frivolous as a matter of law. *See Demos v. United States District Court*, 925 F.2d 1160, 1161 (9th  
24

1 Cir. 1991). Therefore, Petitioner must show cause why his request for an order compelling the  
2 Washington state court to provide him with copies and appoint counsel should not be dismissed  
3 as frivolous.

## 4 **II. Conditions of Confinement**

5 Petitioner does not appear to seek release from custody, which would be appropriate under  
6 28 U.S.C. § 2254. *See Preiser v. Rodriguez*, 411 U.S. 475, 503 (1973); Dkt. 1. Rather,  
7 Petitioner's remaining claims allege he is being denied access to the courts, in which a civil  
8 rights action would be the proper method to challenge such conditions of confinement. Dkt. 1;  
9 *See Badea v. Cox*, 931 F.3d 573, 574 (9th Cir. 1991).

10 As Petitioner's claims regarding violations of his right to access to the courts implicate  
11 the conditions of his confinement and not the fact or duration of his custody, his constitutional  
12 claims cannot form the basis of habeas relief. Petitioner's access to courts claims must be  
13 brought in a civil rights complaint.

## 14 **III. Instructions to Petition and Clerk**

15 If Petitioner intends to pursue a habeas action, he must file an amended petition on the  
16 form provided by the Court, including only claims challenging the fact or duration of his  
17 custody. Petitioner may file a separate § 1983 complaint challenging the conditions of his  
18 confinement on the form provided by the Court.

19 The amended petition must be legibly rewritten or retyped in its entirety, it should be an  
20 original and not a copy, it should contain the same case number, and it may not incorporate any  
21 part of the original Petition by reference. The amended petition will act as a complete substitute  
22 for the original Petition, and not as a supplement.

23

24

1 If Petitioner fails to adequately address the issues raised herein and file an amended  
2 petition on or before July 6, 2020, the undersigned may recommend dismissal of this action.

3 The Clerk is directed to provide Petitioner with the forms for filing a petition for habeas  
4 corpus relief pursuant to 28 U.S.C. § 2254 and forms for filing a 42 U.S.C. § 1983 civil rights  
5 complaint. The Clerk is further directed to provide copies of this Order to Petitioner.

6  
7 Dated this 4th day of June, 2020.

8 

9 \_\_\_\_\_  
10 David W. Christel  
11 United States Magistrate Judge  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24