

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 27 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LAWRENCE J. PETITTA,

Petitioner-Appellant,

v.

DANIEL PARAMO, Warden,

Respondent-Appellee,

and

J. BEARD and SCOTT KERN, Director-  
CDCR,

Respondents.

No. 18-17251

D.C. No. 4:17-cv-02996-HSG  
Northern District of California,  
Oakland

ORDER

Before: Trott and Murguia, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

*Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2);

*Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

**DENIED.**

A.

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LAWRENCE J. PETITTA,

Petitioner-Appellant,

v.

DANIEL PARAMO, Warden; J. BEARD;  
and SCOTT KERN, Director-CDCR,

Respondents-Appellees.

No. 18-17251

D.C. No. 4:17-cv-02996-HSG  
Northern District of California,  
Oakland

ORDER

Before: SILVERMAN and CALLAHAN, Circuit Judges.

Appellant's motion for reconsideration en banc (Docket Entry No. 3) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11. No further filings will be entertained in this closed case.

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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

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8 LAWRENCE J PETITTA,  
9 Petitioner,  
10 v.  
11 D. PARAMO, Warden,  
12 Respondent.

Case No. 17-cv-02996-HSG (PR)

**ORDER OF DISMISSAL; DENYING  
CERTIFICATE OF APPEALABILITY**

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**INTRODUCTION**

Petitioner, a California inmate currently incarcerated at R.J. Donovan Correctional Facility, filed this *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 26, 2017, the court dismissed the petition with leave to amend within twenty-eight days. On September 13, 2017, the court dismissed the case without prejudice after petitioner failed to file an amended petition.

On September 25, 2017, petitioner filed a letter with the court stating that he never received the order dismissing his case with leave to amend. He also filed an amended petition. On October 3, 2017, the court entered an order noting that the amended petition appeared to have the same deficiencies as the original petition and directing petitioner to file a second amended petition within twenty-eight days. On October 27, 2017, petitioner filed a second amended petition. On January 5, 2018, the action was reassigned to the undersigned judge, and the court reopened the case on January 22, 2018. The second amended petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

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1 state.” *Id.* at 7. Petitioner concludes that this is a violation of the Contracts Clause of Article 1,  
2 Section 10 of the United States Constitution, which in turn violates the Sovereignty Clause of  
3 Article 6, Section 2. *Id.* at 10.

4 The petition must be dismissed. Petitioner does not allege that any terms of his specific  
5 plea agreement have been breached and does not otherwise challenge his conviction or sentence.  
6 Petitioner makes reference to the three-judge panel in *Plata v. Brown*, No. C 01-1351 JST. *Plata*  
7 is a class action pending in this District concerning the constitutional adequacy of California’s  
8 inmate medical health care and involves the class of state prisoners with serious medical  
9 conditions. The *Plata* court has issued various orders related to prison overcrowding and has  
10 required the State of California to undertake prison population reduction measures. The decisions  
11 in *Plata* do not create an enforceable right for any particular prisoner to be released. In sum, the  
12 petition fails to state a claim that petitioner is in custody in violation of his rights under the  
13 Constitution, treaties or laws of the United States.

14 Where an inmate seeks to challenge the conditions of his confinement, but not the length  
15 or validity of his confinement, a civil rights action under 42 U.S.C. § 1983 is proper. *See Badea v.*  
16 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action proper method of challenging  
17 conditions of confinement); *Crawford v. Bell*, 599 F.2d 890, 891-92 (9th Cir. 1979) (affirming  
18 dismissal of habeas petition because challenges to terms and conditions of confinement must be  
19 brought as civil rights complaint). If upon reflection, petitioner finds that a civil rights action is  
20 the more proper avenue for his claims and the relief that he seeks, he may file a separate action  
21 pursuant to 42 U.S.C. § 1983. Such action must be filed in the United States District Court for the  
22 Southern District of California, where petitioner is detained.

### 23 CONCLUSION

24 For the foregoing reasons, the petition is DISMISSED for failure to state grounds upon  
25 which relief can be granted. Petitioner has failed to make a substantial showing that his claims  
26 amounted to a denial of his constitutional rights or demonstrate that a reasonable jurist would find  
27 the denial of his claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
28 Consequently, no certificate of appealability is warranted in this case.