

DEC 3 2019

Jorge Navarrete Clerk

S259157

Deputy

IN THE SUPREME COURT OF CALIFORNIA

LANCE R. MARTIN, Petitioner,

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
Respondent;

C. GIBSON, Real Party in Interest.

The above-entitled matter is transferred to the Court of Appeal, Fourth Appellate
District, Division One.

CANTIL-SAKAUYE

Chief Justice

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
09/26/2019
Kevin J. Lane, Clerk
By: Michael Hubbard

LANCE R. MARTIN,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION et al.,

Respondents.

D076408

(San Diego County
Super. Ct. No. HSC11352)

F

THE COURT:

The petition for writ of mandate and the petition for writ of habeas corpus have been read and considered by Justices Huffman, Haller, and O'Rourke. Petitioner is not entitled to relief by writ of habeas corpus because he has been released from prison and discharged from parole. (*People v. Villa* (2009) 45 Cal.4th 1063, 1069; *People v. Kim* (2009) 45 Cal.4th 1078, 1108.) Petitioner is not entitled to relief by writ of mandate because he has a plain, speedy, and adequate remedy in the ordinary course of law by civil action. (Code Civ. Proc., § 1086; *Flores v. Department of Corrections & Rehabilitation* (2014) 224 Cal.App.4th 199, 205-206.) The petitions are therefore denied.

HUFFMAN, Acting P. J.

Copies to: All parties

AUG 22 2019

CLERK OF THE SUPERIOR COURT
BY: D. DICCION

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF:)

) HSC 11352

LANCE MARTIN,

Petitioner.

) ORDER DENYING PETITIONS FOR
) WRIT OF HABEAS CORPUS

AFTER REVIEWING THE PETITIONS FOR WRIT OF HABEAS CORPUS IN
THE ABOVE-REFERENCED MATTER, THE COURT FINDS:

On July 17, 2019 petitioner filed what he captioned a petition for writ of mandate. Petitioner complains that while he was on parole and housed in a California Department of Corrections and Rehabilitation (CDCR), parole independent living facility, CDCR telepathically controlled persons in the facility with an electronic monitoring device to cause them to contaminate food, water, and bedding used by petitioner and others. Petitioner claims he sought administrative review, but CDCR did not respond to his appeal. He claims that even though he has been discharged from parole, CDCR is still electronically monitoring him to run their poisoning operation.

As an initial matter, even though petitioner has titled his petition as one for writ of

1 mandate¹, the claims relate to conditions of parole and as such, the court construes the
2 petition as a petition for writ of habeas corpus. (*In re Jones* (1962) 57 Cal.2d 860;
3 *People v. Picklesimer* (2010) 48 Cal.4th 330, 341.)

4 On August 9, 2019 petitioner filed a petition for writ of habeas corpus seeking
5 relief from illegal government electronic surveillance without probable cause or court
6 order.

7 The petitions are denied.

8 Penal Code section 1473(a) provides: "Every person unlawfully imprisoned or
9 restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas
10 corpus, to inquire into the cause of such imprisonment or restraint."

11 Every petitioner, even one filing in pro per, must set forth a *prima facie* statement
12 of facts that would entitle him to habeas corpus relief. (*In re Bower* (1985) 38 Cal.3d
13 865, 872; *In re Hochberg* (1970) 2 Cal.3d 870, 875 fn 4.) The petitioner then bears the
14 burden of proving the facts upon which he bases his claim for relief. (*In re Riddle*
15 (1962) 57 Cal.2d 848, 852.) Vague or conclusory allegations do not warrant habeas
16 relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) The petition should include copies of
17 "reasonably available documentary evidence in support of claims . . ." (*Id.*)

18 July 17, 2019 Petition

19 Petitioner includes a copy of his parole discharge ID card which indicates that
20 petitioner was discharged from the jurisdiction of the CDCR on April 9, 2019. Because
21 petitioner is no longer on parole under the jurisdiction of CDCR and no longer living in
22 parole housing he is not restrained of his liberty by CDCR and cannot seek habeas
corpus relief.

23 August 9, 2019 Petition

24 Petitioner has failed to set forth a prima facie statement of facts establishing his
25 right to habeas corpus relief on the basis of an unlawful restraint on his liberty. The
26

27
28 ¹ Even if construed as a petition for writ of mandate, petitioner has not complied with the proper filing for requirements
for a petition for writ of mandate.

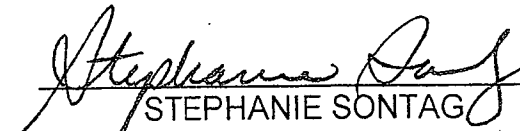
1 issue of which he complains are not properly address on petition for writ of habeas
2 corpus.

3 Pursuant to the foregoing, the petitions are denied.

4 A copy of this Order shall be served upon petitioner.

5 IT IS SO ORDERED.

6 DATE: 8/22/19


STEPHANIE SONTAG
JUDGE OF THE SUPERIOR COURT

**Additional material
from this filing is
available in the
Clerk's Office.**