

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAY 24 2022

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

SHAHEED SCOTT, Sr., AKA Rodney L.
Scott,

Petitioner-Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION;
et al.,

Respondents-Appellees.

No. 21-15443

D.C. No. 2:20-cv-01820-TLN-AC
Eastern District of California,
Sacramento

ORDER

Before: RAWLINSON and NGUYEN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant's 28 U.S.C. § 2254 petition fails to state any cognizable habeas claims debatable among jurists of reason. *See* 28 U.S.C. § 2253(c)(2)-(3); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Nettles v. Grounds*, 830 F.3d 922, 934-35 (9th Cir. 2016) (en banc) (holding that claims fall outside "the core of habeas corpus" if success will not necessarily lead to immediate or earlier release from confinement), *cert. denied*, 137 S. Ct. 645 (2017); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAHEED SCOTT, SR.

No. 2:20-cv-1820 AC P

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Respondents.

ORDER AND FINDINGS &
RECOMMENDATIONS

Petitioner, a former state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and paid the filing fee.

I. The Petition

Petitioner alleges that after the parole board found him suitable for parole on July 17, 2014, California Penal Code § 3041(b)(2) required that he be released within 120 days of that decision. ECF No. 1 at 1-4. He asserts that his rights were violated when he was held an additional 35 days in custody after the expiration of the 120-day period. Id. He seeks relief in the form of compensation for the additional thirty-five days he was held in custody. Id. at 6.

II. Discussion

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) requires the court to summarily dismiss a habeas petition, “[i]f it plainly appears

1 from the petition and any attached exhibits that the petitioner is not entitled to relief in the district
2 court.” As set forth below, the petition fails to state a cognizable claim for relief and should be
3 dismissed.

4 Federal habeas corpus relief is available only for challenges to the duration or legality of a
5 prisoner’s confinement. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). In this case, the only
6 relief petitioner seeks is compensatory damages, which falls outside the scope of habeas.¹
7 Additionally, a petitioner may seek federal habeas relief from a state-court conviction or sentence
8 “only on the ground that he is in custody in violation of the Constitution or laws or treaties of the
9 United States.” 28 U.S.C. § 2254(a). Assuming that petitioner is still in custody,² he fails to state
10 a cognizable federal habeas claim because his allegations relate only to the interpretation or
11 application of state law. Moreover, he fails to show a violation of the state law that he invokes.

12 Petitioner argues that under California Penal Code § 3041(b)(2), he was required to be
13 released within 120 days of the parole board hearing at which he was found suitable for parole.
14 However, the statute provides that “any decision of the parole panel finding an inmate suitable for
15 parole shall become *final* within 120 days of the date of the hearing.” Cal. Penal Code
16 § 3041(b)(2) (emphasis added). The statute determines only when the parole board’s suitability
17 decision becomes final and makes no reference to when an inmate must be released after he is
18 found suitable for parole. More fundamentally, even if the statute should be interpreted as
19 petitioner claims, habeas relief “is unavailable for alleged error in the interpretation or application
20 of state law.” Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985) (citation omitted); see
21 also Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (“[I]t is not the province of a federal habeas
22 court to reexamine state-court determinations on state-law questions.” (citation omitted)).

23

24 ¹ The court declines to offer petitioner the opportunity to convert his claim to a civil rights claim
25 under 42 U.S.C. § 1983 because it does not appear his conviction or sentence have been
26 invalidated. Accordingly, any claim for compensatory damages would be barred by Heck v.
Humphrey because success on his claim would “necessarily imply the invalidity of his conviction
or sentence.” 512 U.S. 477, 487 (1994).

27 ² Although petitioner is no longer in physical custody, the court assumes for purposes of
28 screening the petition that he is on parole, and a prisoner who is on parole is still considered to be
“in custody.” Maleng v. Cook, 490 U.S. 488, 491 (1989).

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly assign a United States District Judge to this action.

3 IT IS FURTHER RECOMMENDED that the petition be dismissed.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
6 after being served with these findings and recommendations, petitioner may file written
7 objections with the court. Such a document should be captioned “Objections to Magistrate
8 Judge’s Findings and Recommendations.” If petitioner files objections, he shall also address
9 whether a certificate of appealability should issue and, if so, why and as to which issues. See 28
10 U.S.C. § 2253(c)(2). Petitioner is advised that failure to file objections within the specified time
11 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th
12 Cir. 1991).

13 | DATED: January 20, 2021

Allison Claire
ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAHEED SCOTT, SR.,

No. 2:20-cv-01820-TLN-AC

Petitioner,

v.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Respondents.

Petitioner Shaheed Scott, Sr. (“Petitioner”), a former state prisoner proceeding *pro se*, has filed an Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 20, 2021, the magistrate judge filed findings and recommendations herein which were served on Petitioner and which contained notice to Petitioner that any objections to the findings and recommendations were to be filed within twenty-one days. (ECF No. 7.) On February 8, 2021, Petitioner filed Objections to the Findings and Recommendations (ECF No. 8), which have been considered by the Court.

This Court reviews *de novo* those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore*

1 *Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982); *see*
2 *also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed
3 findings of fact to which no objection has been made, the Court assumes its correctness and
4 decides the motions on the applicable law. *See Orand v. United States*, 602 F.2d 207, 208 (9th
5 Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. *See Britt v. Simi*
6 *Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

7 Having reviewed the file under the applicable legal standards, the Court finds the Findings
8 and Recommendations to be supported by the record and by the magistrate judge's analysis.

9 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has
10 considered whether to issue a certificate of appealability. Before Petitioner can appeal this
11 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
12 Where the petition is denied on the merits, a certificate of appealability may issue under 28
13 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a
14 constitutional right." 28 U.S.C. § 2253(c)(2). The Court must either issue a certificate of
15 appealability indicating which issues satisfy the required showing or must state the reasons why
16 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
17 procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that
18 jurists of reason would find it debatable whether the district court was correct in its procedural
19 ruling'; and (2) 'that jurists of reason would find it debatable whether the petition states a valid
20 claim of the denial of a constitutional right.'" *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
21 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000)). For the reasons set forth in the
22 Findings and Recommendations (ECF No. 7), the Court finds that issuance of a certificate of
23 appealability is not warranted in this case.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. The Findings and Recommendations filed January 20, 2021 (ECF No. 7), are
26 ADOPTED IN FULL;

27 2. The Petition is DISMISSED;

28 ///

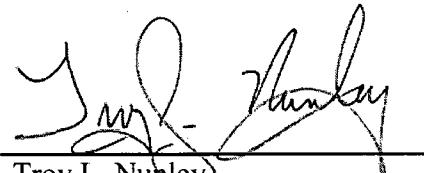
1 3. The Court declines to issue the certificate of appealability referenced in 28 U.S.C.
2 § 2253; and

3 4. The Clerk of the Court is directed to close this case.

4 IT IS SO ORDERED.

5 DATED: February 12, 2021

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Troy L. Nuhley
United States District Judge

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