

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 15 2022

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

ANTHONY DEWAYNE LEE TURNER,

No. 22-15444

Plaintiff-Appellant,

D.C. No.

v.

2:21-cv-01515-TLN-DB

UNKNOWN,

Eastern District of California,
Sacramento

Defendant-Appellee.

ORDER

Before: OWENS, LEE, and BUMATAY, Circuit Judges.

Upon a review of the record, the response to the order to show cause, and the opening brief received on May 12, 2022, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 5), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY DEWAYNE LEE TURNER,

No. 2:21-cv-01515-TLN-DB

Plaintiff.

ORDER

UNKNOWN,

Defendant.

Plaintiff, a state prisoner proceeding *pro se*, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. 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 4, 2022, the magistrate judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within thirty days. (ECF No. 12.) Plaintiff has filed objections to the findings and recommendations. (ECF No. 13.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings and recommendations to be supported by the record and by proper analysis.

111

1 Accordingly, IT IS HEREBY ORDERED:

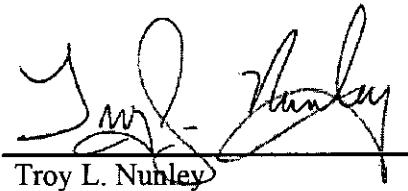
2 1. The findings and recommendations filed January 4, 2022, (ECF No. 12), are adopted in
3 full;

4 2. Plaintiff's complaint (ECF No. 1) is dismissed without leave to amend; and

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

6

7 DATED: February 1, 2022

8
9
10 
11 Troy L. Nunley
12 United States District Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 07 2022

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

ANTHONY DEWAYNE LEE
TURNER,

Plaintiff - Appellant,

v.

UNKNOWN,

Defendant - Appellee.

No. 22-15444

D.C. No. 2:21-cv-01515-TLN-DB
U.S. District Court for Eastern
California, Sacramento

MANDATE

The judgment of this Court, entered June 15, 2022, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Jessica Flores
Deputy Clerk
Ninth Circuit Rule 27-7

22-15444

Anthony Dewayne Lee Turner, #BJ-9612
MCSP - MULE CREEK STATE PRISON
"D" Yard
P.O. Box 409089
Ione, CA 95640

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 18 2022

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

ANTHONY DEWAYNE LEE TURNER,

No. 22-15444

Plaintiff-Appellant,

D.C. No.

v.

2:21-cv-01515-TLN-DB

UNKNOWN,

Eastern District of California,
Sacramento

Defendant-Appellee.

ORDER

A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), OR
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant does not move to dismiss this appeal, the court may dismiss the appeal as frivolous, without further notice.

Any determination of whether the appeal is frivolous will be based on the opening

brief received on May 12, 2022, and appellant's statement, if any, in response to this order.

If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g).

The briefing schedule for this appeal remains stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Lior A. Brinn
Deputy Clerk
Ninth Circuit Rule 27-7

34

Anthony Dewayne Lee Turner BJ-9612
MULE CREEK STATE PRISON (409089)
PO BOX 409089
IONE, CA 95640

67

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814

TO: CLERK, U.S. COURT OF APPEALS
FROM: CLERK, U.S. DISTRICT COURT
SUBJECT: NEW APPEALS DOCKETING INFORMATION

CASE INFORMATION

USDC Number: 2:20-CV-00201-KJM-CKD
USDC Judge: CHIEF DISTRICT JUDGE KIMBERLY J. MUELLER
USCA Number: NEW APPEAL
Complete Case Title: ANTHONY DEWAYNE LEE TURNER vs. UNKNOWN
Type: CIVIL
Complaint Filed: 1/27/2020
Appealed Order/Judgment Filed: 8/12/2020
Court Reporter Information:

FEE INFORMATION

Fee Status: IFP Granted on 6/15/2020

Information prepared by: /s/ A. Coll, Deputy Clerk

36

MIME-Version:1.0 From:caed_cmecl_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Anthony Dewayne Lee Turner
BJ-9612
MULE CREEK STATE PRISON (409089)
PO BOX 409089
IONE CA 95640
US
--Case Participants: Magistrate Judge Carolyn K. Delaney (caed_cmecl_ckd@caed.uscourts.gov), Chief District Judge Kimberly J. Mueller (caed_cmecl_kjm@caed.uscourts.gov)
--Non Case Participants: Appeals Court - Ninth Circuit (cmecl_ca9central@ca9.uscourts.gov)
--No Notice Sent:
Message-Id: Subject:Activity in Case 2:20-cv-00201-KJM-CKD (HC) Turner v. Unknown .
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 12/17/2020 at 8:22 AM PST and filed on 12/17/2020

Case Name: (HC) Turner v. Unknown

Case Number: 2:20-cv-00201-KJM-CKD

Filer:

WARNING: CASE CLOSED on 08/12/2020

Document Number: 18

Docket Text:

APPEAL PROCESSED to Ninth Circuit re [17] Notice of Appeal filed by Anthony Dewayne Lee Turner, Notice of Appeal filed *11/17/2020*, Complaint filed *1/27/2020* andAppealed Order / Judgment filed *8/12/2020*. ** Fee Status: IFP Granted on 6/15/2020* (Coll, A)

2:20-cv-00201-KJM-CKD Notice has been electronically mailed to:

2:20-cv-00201-KJM-CKD Electronically filed documents must be served conventionally by the filer to:

Anthony Dewayne Lee Turner

BJ-9612

MULE CREEK STATE PRISON (409089)

PO BOX 409089

IONE CA 95640

US

39

37

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK
501 "I" Street
Sacramento, CA 95814

ANTHONY DEWAYNE LEE TURNER,
Plaintiff

v.

CASE NO. 2:20-CV-00201-KJM-CKD

UNKNOWN,
Defendant

You are hereby notified that a Notice of Appeal was filed on November 17, 2020
in the above entitled case. Enclosed is a copy of the Notice of Appeal, pursuant
to FRAP 3(d).

December 17, 2020

KEITH HOLLAND
CLERK OF COURT

by: /s/ A. Coll

Deputy Clerk

70

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY DEWAYNE LEE TURNER,

No. 2:21-cv-1515 DB P

Plaintiff,

Y.

UNKNOWN,

Defendant.

ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner, proceeds pro se with a civil rights complaint originally filed in the Northern District of California. On August 20, 2021, the Northern District of California transferred the case to this court. This matter is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302. Plaintiff's original complaint filed on June 28, 2021 is before the court for screening.

I. In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Examination of the in forma pauperis application reveals plaintiff is unable to afford the costs of suit. However, because it is unclear whether plaintiff's pleading was properly framed as a civil rights complaint, rather than a petition for writ of habeas corpus, and the filing costs associated with each pleading are different, the court will defer ruling on the application to proceed in forma pauperis at this time. As set forth below, the undersigned recommends this action be dismissed.

1 **II. Screening Requirement and Pleading Standard**

2 The court is required to screen complaints brought by prisoners and seeking relief against
3 a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a).
4 Pursuant to 28 U.S.C. § 1915A(a), the court must dismiss a complaint or portion thereof if the
5 prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon
6 which relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 A complaint must contain “a short and plain statement of the claim showing that the
9 pleader is entitled to relief....” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
12 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
13 matter, accepted as true, to state a claim to relief that is plausible on its face.” Id.

14 **III. Allegations in the Complaint**

15 Plaintiff is presently confined at Mule Creek State Prison. Plaintiff’s complaint makes
16 allegations arising out of his criminal case in the Sacramento County Superior Court, case number
17 94F04029 (report number 94-016414). According to publicly accessible records of the
18 Sacramento County Superior Court, plaintiff was charged with first-degree burglary in case
19 number 94F04029. By court trial on January 24, 1996, he was found not guilty by reason of
20 insanity, which resulted in a civil commitment.¹

21 Plaintiff alleges the prosecution did not meet its evidentiary burden and his counsel
22 rendered ineffective assistance. (See ECF No. 1 at 2-3.) A witness, Daryal Parker, made “two
23

24

¹ This court takes judicial notice of the online docket records for the Sacramento County
25 Superior Court. See U.S. v. 14.02 Acres of Land More or Less in Fresno Cnty., 547 F.3d 943, 955
26 (9th Cir. 2008) (a court may take judicial notice of “matters of public record”); Minor v. Fedex
27 Office and Print Services Inc., 78 F. Supp. 3d 1021, 1027-28 (N.D. Cal. 2015) (court filings and
publicly accessible websites are proper subjects for judicial notice). These records are publicly
accessible at
<https://services.saccourt.ca.gov/PublicCaseAccess/Criminal/CaseDetails?sourceSystemId=8&sourceKey=414030>, last accessed 12/27/2021.

1 different testimonies,” one of which matched appellant’s alibi. (*Id.* at 3.) On appeal, plaintiff’s
2 appellate counsel failed to ensure the record was sufficient. (*Id.* at 2.) For relief, plaintiff seeks
3 “any and all relief payable” and to be “pardon[ed] from this criminal history.” (*Id.* at 3.)

4 **IV. Discussion**

5 Federal law opens two main avenues to relief on complaints related to state imprisonment:
6 a petition for habeas corpus under 28 U.S.C. § 2254 and a civil rights complaint under 42 U.S.C.
7 § 1983. See Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam). “Challenges to the
8 validity of any confinement or to particulars affecting its duration are the province of habeas
9 corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983
10 action.” *Id.* (internal citation omitted). Stated differently, claims challenging “the fact or duration
11 of the conviction or sentence” are within the core of habeas corpus, while claims challenging
12 “any other aspect of prison life” are properly brought as civil rights actions. Nettles v. Grounds,
13 830 F.3d 922, 934 (9th Cir. 2016) (en banc).

14 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
15 immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.
16 Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To state a claim under § 1983, a
17 plaintiff must allege a violation of a right secured by the Constitution or laws of the United States
18 committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48
19 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

20 A habeas corpus action, in contrast, provides a method for a person held in confinement to
21 seek immediate or more speedy release. See Preiser v. Rodriguez, 411 U.S. 475, 494 (1973).
22 Habeas corpus is the exclusive vehicle for such claims, which may not be brought in a § 1983
23 civil rights action. Nettles, 830 F.3d at 927.

24 Plaintiff’s complaint in this action is presented on a civil rights complaint form and he
25 seeks monetary relief in the form of any relief payable. However, the complaint does not
26 challenge any aspect of prison life and does not state a cognizable claim under 42 U.S.C. § 1983.
27 Despite plaintiff’s attempt to present this action as a civil rights matter, the claims presented
28 challenge the validity of his current or prior confinement arising out of case number 94F04029 in

1 the Sacramento County Superior Court. The proper avenue to seek such relief is by way of a
2 habeas corpus petition filed under 28 U.S.C. § 2254. Because plaintiff was convicted in
3 Sacramento County, such a challenge is properly filed in this court. Court records confirm
4 plaintiff is presently pursuing habeas relief in Turner v. Covello, No. 2:21-cv-1328 JAM DMC
5 (E.D. Cal.), which is an open case.² Plaintiff should raise all challenges to his current or prior
6 confinement in his pending case. If plaintiff did not include his present challenges in his pending
7 federal habeas petition, he may wish to seek leave to do so, provided he has exhausted his state
8 court remedies as to such challenges. See Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008).

9 Plaintiff's allegations do not state a claim for relief under 42 U.S.C. § 1983 and the
10 complaint must be dismissed.³ Although the court would generally grant plaintiff leave to amend
11 in light of his pro se status, here the allegations could not be amended to state a cognizable claim
12 under 42 U.S.C. § 1983. Thus, the complaint's deficiencies cannot be cured by amendment and
13 leave to amend would be futile. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); see also Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (a civil rights complaint
15 seeking habeas relief should be dismissed without prejudice to filing as a petition for writ of
16 habeas corpus).

17 In accordance with the above, IT IS ORDERED that the Clerk of the Court shall assign a
18 district judge to this case.

19

20 ² Plaintiff has additionally brought at least one prior habeas corpus action challenging the fact or
21 duration of his commitment arising out of Sacramento County Superior Court case number
94F04029. See Turner v. Unknown, E.D. Cal. Case No. 2:20-cv-0201 KJM CKD.

22 ³ Plaintiff is cautioned that, in addition to incurring future court filing fees, his continued filing of
23 civil rights complaints attempting to challenge the validity of his current or prior confinement
24 may result in a three strikes bar under 28 U.S.C. § 1915(g), limiting his future access to the
25 federal courts. Section 1915(g) bars inmates who have, on at least three occasions, filed civil
26 lawsuits that have been dismissed on the grounds that they were frivolous or malicious or failed
27 to state a claim upon which relief may be granted. Id. When the court dismisses a civil rights
28 action on the ground that it fails to state a claim upon which relief can be granted, it constitutes a
“strike” under the “three strikes” provision of 28 U.S.C. § 1915(g). If plaintiff accumulates three
strikes, he will be barred from bringing any further actions in federal court without prepaying the
filing fee, unless he can establish that he is in imminent danger of serious harm. 28 U.S.C. §
1915(g); Andrews v. Cervantes, 493 F.3d 1047, 1049-51 (9th Cir. 2007).

1 In addition, IT IS RECOMMENDED:

2 1. Plaintiff's complaint (ECF No. 1) be dismissed without leave to amend; and
3 2. The Clerk of the Court be directed to close this case.

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 thirty days after
6 being served with these findings and recommendations, any party may file written objections with
7 the court and serve a copy on all parties. Such a document should be captioned "Objections to
8 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be
9 served and filed within fourteen days after service of the objections. Plaintiff is advised that
10 failure to file objections within the specified time may waive the right to appeal the District
11 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: January 3, 2022

13
14
15 DLB7
16 turn1515.screenfr



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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