APPENDIX

A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

HUY TRONG TRAN, Petitioner-Appellant, v. KEN CLARK, Warden, Respondent-Appellee.	No. 22-55798 D.C. No. 8:21-cv-00884-VBF-JPR Central District of California, Santa Ana ORDER

Before: TASHIMA and SILVERMAN, Circuit Judges.

Appellant's opening brief (Docket Entry No. 6) is construed as a request for a certificate of appealability. So construed, the request 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); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *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).

All pending motions are denied as moot.

DENIED.

OSA127

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HUY TRONG TRAN, Petitioner, v. KEN CLARK, Warden,[1] Respondent.	Case No. SACV 21-0884-VBF (JPR) REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE
HUY TRONG TRAN, Plaintiff, v. CDCR et al., Defendants.	Case No. SACV 21-0886-VBF (JPR)

This Report and Recommendation is submitted to the Honorable Valerie Baker Fairbank, U.S. District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the U.S. District Court for the

[1] Ken Clark is the warden of Corcoran state prison, where Tran is housed, and is substituted in under Federal Rule of Civil Procedure 25(d) as the proper Respondent. See also R.2(a), Rules Governing § 2254 Cases in U.S. Dist. Cts.

Central District of California.[2] For the reasons discussed below, the Court recommends that Respondent's motion to dismiss the Petition be granted and that it and the FAC be dismissed with prejudice.

PROCEEDINGS

On May 12, 2021, Tran filed pro se a Petition for Writ of Habeas Corpus by a Person in State Custody. He alleges that prison officials failed to apply earned credits to his sentence. (See Pet. at 5, 8, 10.)[3] This conduct, he claims, violated his constitutional right to due process, equal protection, and freedom from cruel and unusual punishment. (See id. at 10.) Respondent moved to dismiss the Petition on June 17, 2021, and Tran opposed on August 13.[4] Respondent did not reply.

Concurrently with the Petition, Tran filed a civil-rights action under 42 U.S.C. § 1983, raising essentially the same claim. On September 8, 2021, before the Court could screen the Complaint, he filed the operative First Amended Complaint, again raising the same claim but without an equal-protection allegation. (Compare Pet. at 10, with FAC at 5, 8.)

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[2] On November 1, 2021, Tran requested an update on the status of his case. This R. & R. provides that update. The request is therefore granted.

[3] For nonconsecutively paginated documents, the Court uses the pagination generated by its Case Management/Electronic Case Filing system.

[4] In his Opposition, Petitioner states that he "do[es]n't know" what he's "opposing" because he never received the motion to dismiss. (Opp'n at 1.) The Court thereafter ordered Respondent to re-serve the motion on Petitioner, and he did so on September 15, 2021. Petitioner nonetheless never filed supplemental opposition despite the Court's expressly giving him leave to do so.

TRAN'S CLAIM

Respondent and Defendants violated the Eighth and 14th amendments by failing to apply custody credits to his sentence, which unlawfully postponed his parole eligibility date. (See Pet. at 5, 8, 10; FAC at 5-9; Opp'n at 1-3.)

BACKGROUND

In November 2008, Tran was convicted and sentenced to 27 years to life in state prison for attempting to kill his ex-girlfriend's boyfriend, plus a 20-year determinate term for an enhancement.[5] (See Pet. at 1, 6, 32-33; FAC at 5); Tran v. Uribe, No. SACV 11-1865-JSL (JPR)., 2012 WL 7832619, at *1, *3-4 (C.D. Cal. Dec. 14, 2012), accepted by 2013 WL 1389995 (C.D. Cal. Apr. 3, 2013), aff'd sub nom. Tran v. Harrington, 589 F. App'x 365 (9th Cir. 2015).

Tran claims that since 2009, a "15% credit was never credited" to his "determinate sentence." (FAC at 5; see Pet. at 3, 8); see also Cal. Penal Code § 2933.1 (allowing person with violent-felony conviction to accrue up to 15 percent in worktime credit). In 2016, Proposition 57 passed, and CDCR issued regulations allegedly "adding another 5% to make it 20% credit off [his] determinate sentence[]."[6] (FAC at 5; see Pet. at 5, 8; Opp'n at 2-3); Cal. Code Regs. tit. 15, § 3043.2(b)(2)(A)

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[5] Tran alleges that he was sentenced to 27 years to life (see Pet. at 1), but the state court on habeas review said he had been sentenced to 20 years to life (see id., Ex. A at 1).

[6] Proposition 57 authorized CDCR to "award credits earned for good behavior and approved rehabilitative or educational achievements." Cal. Const. art. I, § 32; see People v. Dynes, 20 Cal. App. 5th 523, 526 (2018).

(awarding one day of "Good Conduct Credit" for every four days of incarceration beginning May 2017). In May 2021, the CDCR apparently increased the rate to 33 percent. See § 3043.2(b)(2); (FAC at 5-6; Opp'n at 2). Yet CDCR allegedly failed to apply that credit to Tran's determinate sentence. (See FAC at 5; Opp'n at 2; see also Pet. at 5, 8.) He believes that with that credit, he should be eligible for a youth-offender parole hearing[7] now, not in 2026, as calculated by CDCR. (See FAC at 7-9; Opp'n at 1-3; see also Pet. at 8, Ex. G.)

In May 2020, Tran filed a habeas petition in the superior court raising the credits claim, and the court denied it on June 19. (See Pet. at 6, 9, Ex. A.) The court summarized the law on youth-offender parole hearings:

> "A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole at a youth offender parole hearing during the person's 20th year of incarceration. The youth parole eligible date for a person eligible for a youth offender parole hearing under this paragraph shall be the first day of the person's 20th year of incarceration."[8] (Pen.

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[7] "A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was 25 years of age or younger, or was under 18 years of age . . . at the time of the controlling offense." Cal. Penal Code § 3051(a)(1).

[8] As noted above, Tran alleges that he was sentenced to 27 years to life. (See Pet. at 1.) If that's true, he would

> Code, § 3051(b)(2).) "'Controlling offense' means the offense or enhancement for which any sentencing court imposed the longest term of imprisonment." (Pen. Code, § 3051(a)(2)(B).)

(Pet., Ex. A at 2-3.)

The court held that CDCR properly calculated Tran's youth-offender parole-hearing eligibility date:

> [Tran] was sentenced in 2009 to an indeterminate life term for attempted premeditated and deliberate murder. [His] indeterminate life term is the component of [his] aggregate state prison sentence that constitutes the longest term of imprisonment. "An indeterminate sentence is in legal effect a sentence for a maximum term, i.e., for life." (People v. Dyer (1969) 269 Cal.App.2d 209, 214.) [Tran] will be eligible for a youth offender parole hearing upon completing 20 years of his state prison sentence. (Pen. Code, § 3051(b)(2).) [CDCR's] calculation of a 2026 eligibility date for [his] youth offender parole hearing is not shown to be erroneous nor in violation of [his] constitutional rights.

(Id. at 3.)

On November 19, 2020, Tran filed a habeas petition in the California Court of Appeal, alleging the same claim. (See Pet.

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apparently be eligible for a youth-offender parole hearing after completing 25 years of his sentence, not 20 years, as he says. (Pet. at 8, 10); see § 3051(b)(3); People v. Garcia, 7 Cal. App. 5th 941, 950-51 (2017) (noting that defendant would be eligible for youth-offender parole hearing after serving 25 years of 32-years-to-life sentence).

at 6, 9, Ex. B); Cal. App. Cts. Case Info., http://appellatecases.courtinfo.ca.gov/ (search for case no. "G059654" in 4th App. Dist. Div. 3) (last visited Nov. 5, 2021). The court summarily denied it a week later. (See Pet. at 6, 9, Ex. B.) He then filed a petition for review in the state supreme court, again raising the same claim. (See Pet. at 6.) On February 17, 2021, that court denied the petition.[9] (See id. at 6, 9, Exs. C & E.)

DISCUSSION

I. The Petition Must Be Dismissed Because It Seeks Relief Unavailable in a Habeas Action

A. Standard of Review

Under 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim – (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme

[9] The supreme court denied it without prejudice to "any relief to which [Tran] might be entitled after this court decides In re Mohammad, S259999." (Pet., Ex. C.) Contrary to Tran's belief (see Pet. at 4, 7), the court has yet to decide that case. See Cal. App. Cts. Case Info., http://appellatecases.courtinfo.ca.gov/ (search for case no. "S259999" in Sup. Ct. showing that Mohammed was submitted for decision on Oct. 5, 2021, and that no opinion has been issued) (last visited Nov. 9, 2021).

Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Under AEDPA, the "clearly established Federal law" that controls federal habeas review consists of holdings of Supreme Court cases "as of the time of the relevant state-court decision." Williams v. Taylor, 529 U.S. 362, 412 (2000). As the Supreme Court has "repeatedly emphasized, . . . circuit precedent does not constitute 'clearly established Federal law, as determined by the Supreme Court.'" Glebe v. Frost, 574 U.S. 21, 24 (2014) (per curiam) (quoting § 2254(d)(1)). Further, circuit precedent "cannot 'refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that [the] Court has not announced.'" Lopez v. Smith, 574 U.S. 1, 7 (2014) (per curiam) (quoting Marshall v. Rodgers, 569 U.S. 58, 64 (2013) (per curiam)).

A state-court decision is "contrary to" clearly established federal law if it either applies a rule that contradicts governing Supreme Court law or reaches a result that differs from the result the Supreme Court reached on "materially indistinguishable" facts. Early v. Packer, 537 U.S. 3, 8 (2002) (per curiam) (citation omitted). A state court need not cite or even be aware of the controlling Supreme Court cases, "so long as neither the reasoning nor the result of the state-court decision contradicts them." Id.

State-court decisions that are not "contrary to" Supreme Court law may be set aside on federal habeas review only "if they

are not merely erroneous, but 'an unreasonable application' of clearly established federal law, or based on 'an unreasonable determination of the facts' (emphasis added)." Id. at 11 (quoting § 2254(d)). To obtain federal habeas relief for such an "unreasonable application," however, a petitioner must show that the state court's application of Supreme Court law was "objectively unreasonable." Williams, 529 U.S. at 409. In other words, habeas relief is warranted only if the state court's ruling was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." Harrington v. Richter, 562 U.S. 86, 103 (2011). "[E]ven clear error will not suffice." Woods v. Donald, 575 U.S. 312, 316 (2015) (per curiam) (citation omitted).

Here, the superior court denied Tran's claim in a reasoned decision. (See Pet., Ex. A.) The state court of appeal and supreme court summarily denied his habeas petitions raising the same claim. (See Pet. at 6, 9, Exs. B, C, & E.) Thus, the Court "looks through" the supreme court's and court of appeal's silent denials to the superior court's decision, the last reasoned state-court decision, as the basis for the state court's judgment. See Wilson v. Sellers, 138 S. Ct. 1188, 1192 (2018). AEDPA's deferential review applies. See Richter, 562 U.S. at 100.

B. Analysis

As Respondent notes (see Mot. Dismiss at 3-4), Tran's claim is not cognizable on federal habeas review because it is premised exclusively on state law — namely, whether CDCR is properly

applying custody credits to his sentence under CDCR regulations, the penal code, and Proposition 57. See Ainsworth v. Spearman, No. 2:19-cv-0232 KJM DB P, 2019 WL 1923188, at *5 (E.D. Cal. Apr. 30, 2019) (whether prison should have applied Proposition 57 custody credits to sentence governing youth-offender parole eligibility date raised state-law issue not cognizable in federal habeas corpus); Knight v. Spearman, No. 2:19-cv-1633 KJM KJN P, 2021 WL 490282, at *6 (E.D. Cal. Feb. 10, 2021) (whether petitioner was denied youth-offender hearing under penal code was not cognizable in federal habeas corpus), accepted by 2021 WL 4478730 (E.D. Cal. Sept. 30, 2021). And his general appeal to due process, equal protection, and the Eighth Amendment doesn't render his claim cognizable. See Gray v. Netherland, 518 U.S. 152, 163 (1996) (explaining that petitioner may not convert state-law claim into federal one by mentioning constitutional guarantee); see also Cacoperdo v. Demosthenes, 37 F.3d 504, 507 (9th Cir. 1994) (habeas petitioner's mere reference to Due Process Clause could not render his claims viable under 14th Amendment).

Similarly, in a federal habeas proceeding Tran may not seek an order requiring Respondent to award credits to advance his parole hearing. "Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983 action." Nettles v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016) (en banc) (citations omitted). A habeas petition is the only available procedural mechanism for claims brought by state prisoners that fall within

"the core of habeas." Id. Conversely, "a § 1983 action is the exclusive vehicle for claims brought by state prisoners that are not within the core of habeas corpus." Id. When success on a petitioner's habeas claim would not necessarily lead to his earlier release from custody, the claim does not fall within the core of habeas corpus. Id. at 934-35.

Because a parole board can "deny parole on the basis of any of the grounds presently available to it," id. at 935 (citation omitted), Tran would not necessarily be entitled to earlier release even if he were granted a youth-offender parole hearing immediately. Thus, his claim does not lie "at the core of habeas" and can be heard only in his concurrently filed civil-rights lawsuit. Id.; see also Roberts v. Warden, No. EDCV 17-62 CJC(JC), 2017 WL 5956666, at *4 (C.D. Cal. Nov. 8, 2017) (finding that credit-loss claim was not cognizable because restoring credit wouldn't necessarily lead to grant of parole or earlier release), accepted by 2017 WL 5905507 (C.D. Cal. Nov. 30, 2017); Garcia v. Johnson, No. CV 19-9382 JLS (PVC), 2020 WL 4037202, at *3 (C.D. Cal. Apr. 9, 2020) (same), accepted by 2020 WL 4697905 (C.D. Cal. Aug. 12, 2020); Nguyen v. Paramo, No. 17cv521 WQH (NLS), 2017 WL 3309804, at *2 (S.D. Cal. Aug. 3, 2017) (dismissing habeas petition because "[e]ven if [petitioner] is eligible for an earlier parole hearing under the youth offender statute, he would still not necessarily be entitled to either an immediate release from or a shorter stay in prison"), accepted by 2017 WL 4272340 (S.D. Cal. Sept. 26, 2017).

In any event, as discussed below, Tran's claim would fail on its merits, as the state court found. But even if the state

court got the governing state law wrong, this Court is bound by its holding. See Bradshaw v. Richey, 546 U.S. 74, 76 (2005) (per curiam) ("[A] state court's interpretation of state law . . . binds a federal court sitting in habeas corpus."). For all these reasons, Tran's habeas petition fails.

II. The FAC Must Be Dismissed Because It Fails to State a Due Process or Eighth Amendment Claim

A. Standard of Review

A complaint may be dismissed as a matter of law for failure to state a claim "where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d 1035, 1041 (9th Cir. 2010) (as amended) (citation omitted); accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In considering whether a complaint states a claim, a court must generally accept as true the factual allegations in it. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). The court need not accept as true, however, "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted); see also Shelton v. Chorley, 487 F. App'x 388, 389 (9th Cir. 2012) (finding that district court properly dismissed civil-rights claim when plaintiff's "conclusory allegations" did not support it).

Although a complaint need not include detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its

face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Yagman v. Garcetti, 852 F.3d 859, 863 (9th Cir. 2017). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678. "A document filed pro se is 'to be liberally construed,' and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (citations omitted); Byrd v. Phx. Police Dep't, 885 F.3d 639, 642 (9th Cir. 2018) (per curiam). Pro se litigants should be granted leave to amend unless it is absolutely clear that the deficiencies cannot be cured by amendment. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc).

B. Analysis

The Due Process Clause protects prisoners from being deprived of liberty without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). It's unclear whether Tran seeks to vindicate his substantive or procedural due process rights. But to state any due-process claim, a plaintiff must identify a liberty interest. See Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Likewise, a plaintiff seeking to state an Eighth Amendment claim may allege facts showing that a defendant was deliberately indifferent to a liberty interest. See Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc); Stein v. Ryan, 662 F.3d 1114, 1118 (9th Cir. 2011).

Tran alleges that Defendants refused to apply credits to his determinate term to advance his youth-offender parole-hearing

date. But "the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison." Wolff, 418 U.S. at 557; see also Ashby v. Lehman, 307 F. App'x 48, 49 (9th Cir. 2009) (finding that inmate lacked constitutionally protected liberty interest in earning early-release credit). Nor does it guarantee a right to parole. See Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7 (1979).

Tran could state a claim if California law or policy created a liberty interest. See Austin, 545 U.S. at 221; Sandin v. Conner, 515 U.S. 472, 483-84 (1995). State-created liberty interests are limited to "freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin, 515 U.S. at 483-84 (citations omitted).

California law may create a liberty interest in "not having earned good-time credits taken away" or in a shortened prison sentence. King v. Jauregui, No. 2:18-cv-09649-DOC (GJS), 2019 WL 6312574, at *4 (C.D. Cal. Oct. 4, 2019), accepted by 2019 WL 6310266 (C.D. Cal. Nov. 22, 2019), aff'd, 851 F. App'x 95 (9th Cir. 2021); see Christ v. Blackwell, No. 2:10-CV-0760-EFB P, 2016 WL 4161129, at *13 (E.D. Cal. Aug. 4, 2016) (observing that inmates possess liberty interest in shortened sentence created by good-time credit, not in credit itself).

But Tran isn't claiming CDCR revoked credit or that awarding credit would shorten his overall sentence. He claims only that it isn't applying credit in a way he believes it should – that

is, to his determinate sentence instead of his life sentence — which he contends would advance his parole-hearing date. (See FAC at 5, 7.) California law doesn't create such a liberty interest. See, e.g., Merdia v. Davis, No. 18-cv-06433-CRB (PR), 2019 WL 631490, at *1 (N.D. Cal. Feb. 14, 2019) (finding that California law didn't create liberty interest in application of good-time credits to parole eligibility date); Ainsworth, 2019 WL 1923188, at *4 (no liberty interest in application of Proposition 57 credits to youth-offender parole eligibility date); see also Mousa v. Trump Admin., No. 1:19-cv-01349-LJO-SAB (PC), 2019 WL 6051611, at *6 (E.D. Cal. Nov. 15, 2019) ("Plaintiff's allegation that he is being denied the ability to earn custody credits at a higher rate fails to state a due process claim."); Christ, 2016 WL 4161129, at *13 (no liberty interest in credits because plaintiff — who was serving 25 years to life — wouldn't necessarily serve shorter sentence if credits were restored).

At any rate, documents attached to the Petition appear to show that as of May 2019, at least, CDCR didn't apply "conduct and programming credits" to an inmate's youth-offender parole eligibility date. (Pet., Ex. D (Attach. Ex. B at 2)); see also Ainsworth, 2019 WL 1923188, at *5 (noting that "[i]t does not appear that California law requires" that CDCR apply credits to youth-offender parole eligibility date); Prison Law Office, "Youth Offender" Parole Hearings, 4 (June 2021), https://prisonlaw.com/wp-content/uploads/2021/06/Youth-Offender-Parole-June-2021.pdf (noting that amount of time prisoners must serve before youth-offender parole eligibility date is "not affected by any good conduct or programming credits" and that "CDCR rules

still calculate the [date] based on actual time served"). Indeed, as the state court found, the plain language of the relevant subsection of the statute requires that a youth offender serve 20 years in prison before he may receive a parole hearing, regardless of how many custody credits he has earned. (See Pet., Ex. A at 2-3.)[10]

To the extent Tran claims that because he was sentenced in part to a determinate term he should receive a youth-offender parole hearing in his 15th year of custody, not his 20th, see § 3051(b)(1), he is wrong. That section applies only to youth offenders who were convicted of a controlling offense for which the sentence was determinate. See id. The "controlling offense" means the "offense or enhancement for which any sentencing court imposed the longest term of imprisonment." § 3051(a)(2)(B). His controlling offense was the conviction for which he received his indeterminate life sentence. (See Pet., Ex. A at 3 (quoting Dyer, 269 Cal. App. 2d at 214 ("[A]n indeterminate sentence is in legal effect a sentence for a maximum term, i.e., for life.")).) Section 3051(b)(1) therefore doesn't apply.

Thus, Tran's due process and Eighth Amendment claims have no

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[10] True, in 2016, § 3051.1 was enacted, mandating that some youth-offender parole hearings be completed by a certain date. (See FAC at 7.) But it specifically applies only to those who were already entitled to a parole hearing on or before January 1, 2016. That does not include Tran. See §§ 3051(i) & 3051.1; In re Hoze, 61 Cal. App. 5th 309, 317 (2021) (noting that sections 3051(i) and 3051.1 set schedules for parole board to "complete parole reviews of eligible prisoners").

merit.[11] Because the FAC's claims fail as a matter of law and can't be cured by amendment, the FAC should be dismissed with prejudice. See Lopez, 203 F.3d at 1130-31.

RECOMMENDATION

IT THEREFORE IS RECOMMENDED that the District Judge accept this Report and Recommendation and direct that Judgment be entered dismissing the Petition and FAC with prejudice.

DATED: November 10, 2021

JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

[11] As noted above, unlike in the Petition, the FAC doesn't bring an equal-protection claim. Such a claim, however, would likely fail. Tran doesn't allege that he falls within a protected class or that Defendants treated him differently from any other prisoner by not applying credits to advance his youth-offender parole eligibility date. See Ainsworth, 2019 WL 1923188, at *5 (rejecting equal-protection claim because nothing suggested that CDCR treated petitioner differently by applying credit to his minimum parole eligibility date instead of to his youth-offender parole eligibility date). Indeed, it is apparently CDCR policy not to do so. (See Pet., Ex. D.)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HUY TRONG TRAN, Petitioner, v. KEN CLARK, Warden, Respondent.	Case No. SACV 21-0884-VBF (JPR) ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE
HUY TRONG TRAN, Plaintiff, v. CDCR et al., Defendants.	Case No. SACV 21-0886-VBF (JPR)

The Court has reviewed the Petition, First Amended Complaint, records on file, and Report and Recommendation of U.S. Magistrate Judge, which recommends that Respondent's motion to dismiss the Petition be granted and that it and the FAC be dismissed with prejudice. See 28 U.S.C. § 636(b)(1). On May 2, 2022, Tran objected to the R. & R; Respondent didn't reply. On May 20 and again on July 21, 2022, Tran moved for appointment of

counsel. Between the filing of the R. & R. and of his Objections, Tran moved to stay each of his cases until the California Supreme Court decided "In re Mohammad, S259999." (Req. at 1, Dec. 6, 2021.) In July 2022, he moved to stay his civil-rights case until he finished exhausting his administrative remedies, and he sought leave to file a Second Amended Complaint.

Most of Tran's objections simply reargue points made in his Petition, Opposition, or FAC. A few warrant discussion, however. First, he argues that because "no state court" adjudicated his claim on the merits, "review de novo is entitled." (Objs. at 2; see also id. at 5.) But as the Magistrate Judge noted, the superior court adjudicated his claim on the merits, finding that the CDCR properly calculated his youth-offender parole-hearing eligibility date. (See R. & R. at 5 (citing Pet., Ex. A at 3).)

Next, apparently challenging the Magistrate Judge's finding that the Petition seeks relief unavailable in a habeas action (see R. & R. at 9-10), he points to MacFarlane v. Walter, 179 F.3d 1131 (9th Cir. 1999), opinion vacated sub nom. Lehman v. MacFarlane, 529 U.S. 1106 (2000). But there, petitioners sought "early-release credit" that would have led to earlier release from prison. See 179 F.3d at 1141 (noting that had petitioners received credit, "they would have been required to serve less time"). Here, "Tran would not necessarily be entitled to earlier release even if he were granted a youth-offender parole hearing immediately." (R. & R. at 10.) The Magistrate Judge didn't err.

Tran is likewise wrong to claim that the Magistrate Judge showed bias. (See Objs. at 3.) She should have noted, he

argues, that a "statu[t]e gives CDCR discretion to apply good conduct and programming credits to advance" a youth-offender parole-eligibility date. (Id.) Yet he doesn't dispute that the CDCR has chosen not to do so, as she observed. (See R. & R. at 14-15.) She wasn't biased.

Tran's stay requests are DENIED. In January 2022, the California Supreme Court issued In re Mohammad, 12 Cal. 5th 518 (2022). That decision involves state-law issues only and, moreover, ruled against the incarcerated petitioner; it doesn't warrant a different outcome here. See id. at 541 (finding that CDCR "acted within its discretion" under state constitution in "excluding individuals currently serving a sentence for a violent felony from early parole consideration"). As for his second stay request, Plaintiff claims to be "waiting for decisions of grievances in exhaustion of administrative remedies level" and for a "reply and decision" from the "Attorney General[]," "Office of Internal Affairs," and the "state auditor[]." (Req. at 1, July 7, 2022.) But he doesn't explain how waiting for those events changes the result here. After all, the Court isn't dismissing the Petition and FAC because he failed to exhaust his administrative remedies.

And because the Court is dismissing the Petition and FAC with prejudice, Tran's motions for appointment of counsel are DENIED as moot. See Navarro v. UCSD Sch. of Med., No. 12CV1339-GPC(BLM)., 2012 WL 4848977, at *2 (S.D. Cal. Oct. 11, 2012). At any rate, as the Court has explained to him, there is no right to counsel in federal habeas proceedings. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987). Nor does such

a right exist in a civil-rights case. See Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (noting that only "exceptional circumstances" support such discretionary appointment). Tran states only that he "cannot afford to employ an attorney." (Mot. at 1, May 20, 2022); see also Mot. at 1, July 21, 2022 (requesting counsel because he "does not have the financial resources to retain counsel").) But that fact doesn't warrant appointment of counsel. See Valenti v. Lizzaraga, No. 2:18-cv-02199-CAS (SHK), 2018 WL 11328334, at *4 (C.D. Cal. Apr. 16, 2018); Madrid v. De La Cruz, No. 1:18-cv-00947-DAD-EPG (PC), 2020 WL 8970175, at *1 (E.D. Cal. May 13, 2020); (see also Order at 1, Feb. 28, 2022 (denying Tran's prior appointment-of-counsel request when he claimed to have "no financial means")). Moreover, Tran filed objections to the R. & R., and his lawsuits have reached their conclusion. He does not need assistance of counsel at this time.

Finally, Tran's motion for leave to file a SAC is DENIED. As the Magistrate Judge correctly found, the FAC's claims fail as a matter of law and can't be cured by amendment. (See R. & R. at 16.) And his proposed SAC concerns Defendants and facts unrelated to those in the FAC and omits entirely the FAC's allegations about his parole-hearing eligibility. (See Mot. Leave at 2-4 (complaining that prison officials lost his personal property and that correctional officers falsified documents).)[1] He "may not change the nature of this suit by adding new,

[1] Because this document is not paginated, the Court uses the pagination generated by its Case Management/Electronic Case Filing system.

unrelated claims in an amended complaint." Lopez v. Berkbile, No. 1:14-cv-01003-LJO-BAM (PC), 2016 WL 4417697, at *2 (E.D. Cal. Aug. 18, 2016); see Dermendziev v. Washington, 624 F. App'x 454, 455 (9th Cir. 2015) (affirming district court's dismissal of complaint without leave to amend when plaintiff "sought to add new claims based on unrelated facts against new defendants at another prison"); Thompson v. Catterson, No. C07-985Z., 2007 WL 3132457, at *1 (W.D. Wash. Oct. 19, 2007) (denying leave to amend complaint to "add unrelated claims and parties").

Having reviewed de novo those portions of the R. & R. to which Tran objects, see 28 U.S.C. § 636(b)(1)(C), the Court accepts the findings and recommendations of the Magistrate Judge. It THEREFORE IS ORDERED that judgment be entered denying the Petition and dismissing it and the FAC with prejudice.[2]

DATED: August 8, 2022

/s/
VALERIE BAKER FAIRBANK
U.S. DISTRICT JUDGE

[2] On May 24, 2022, Tran requested an update on the status of his case. His request is GRANTED, as outlined above.

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