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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EUGENE HILL,)	1:08-CV-00661 LJO SMS HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION
)	REGARDING PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
V. M. ALMAGER,)	
)	
Respondent.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This action has been referred to this Court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72-302.

On April 1, 2008, Petitioner filed the instant petition for writ of habeas corpus in the United States District Court for the Southern District of California. The petition was transferred and received in this Court on May 12, 2008. Petitioner complains the California Department of Corrections maintains a 41-page confidential file in his central file which he has not been allowed to view. He seeks to conduct an in camera review of the file to determine whether it contains unreliable or illegal information. He claims the information contained in the file has prejudiced him in his past parole hearings and will prejudice him in future hearings.

1 **DISCUSSION**

2 A. Procedural Grounds for Summary Dismissal

3 Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

4 If it plainly appears from the petition and any attached exhibits that the petitioner is not
5 entitled to relief in the district court, the judge must dismiss the petition and direct the clerk
6 to notify the petitioner.

7 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
8 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to
9 dismiss, or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th
10 Cir.2001). A petition for habeas corpus should not be dismissed without leave to amend unless it
11 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson,
12 440 F.2d 13, 14 (9th Cir. 1971).

12 B. Failure to State a Cognizable Federal Claim

13 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241 of
14 Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner unless
15 he is “in custody in violation of the Constitution.” 28 U.S.C. § 2254(a) states:

16 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall
17 entertain an application for a writ of habeas corpus in behalf of a person in
18 custody pursuant to a judgment of a State court *only on the ground that he is in
19 custody in violation of the Constitution or laws or treaties of the United States.*

20 (emphasis added). See also, Rule 1 to the Rules Governing Section 2254 Cases in the United States
21 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
22 person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484
23 (1973).

24 Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must
25 demonstrate that the adjudication of his claim in state court

26 resulted in a decision that was contrary to, or involved an unreasonable application
27 of, clearly established Federal law, as determined by the Supreme Court of the
28 United States; or 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.

28 U.S.C. § 2254(d)(1),(2).

1 In the instant case, Petitioner fails to state a cognizable federal claim. He asserts the
2 information contained within the confidential file has prejudiced him in his previous parole hearings.
3 This claim is completely conclusory and unsupported by any evidence. "Conclusory allegations
4 which are not supported by a statement of specific facts do not warrant habeas relief." James v. Borg,
5 24 F.3d 20, 29 (9th Cir.1994); Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir.1995) (holding that
6 conclusory allegations made with no reference to the record or any document do not merit habeas
7 relief); Allard v. Nelson, 423 F.2d 1216, 1217 (9th Cir.1970) (Conclusory allegations in a habeas
8 petition fail to state a claim and do not suffice to shift the burden to the state to answer an order to
9 show cause.); Campbell v. Wood 18 F.3d 662, 679 (9th Cir.1994), *citing* Boehme v. Maxwell, 423
10 F.2d 1056, 1058 (9th Cir.1970) ("An evidentiary hearing is not required on allegations that are
11 "conclusory and wholly devoid of specifics."). Petitioner does not allege the previous panels used
12 any improper or incorrect information. He merely assumes that whatever information is contained in
13 the file must be prejudicial. This is insufficient to present a federal claim. Even if the Board had used
14 incorrect information, Petitioner could have and should have objected at those hearings and clarified
15 the information.

16 Petitioner also contends the information in the file will be used in future hearings to his
17 detriment. This claim presents a threshold question of ripeness. The Supreme Court has stated that
18 the basic rationale of the ripeness doctrine "is to prevent the courts, through premature adjudication,
19 from entangling themselves in abstract disagreements." Thomas v. Union Carbide Agricultural
20 Products Co., 473 U.S. 568, 580 (1985). The court's role is "neither to issue advisory opinions nor
21 to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with
22 the powers granted the judiciary in Article III of the Constitution." Thomas v. Anchorage Equal
23 Rights Com'n, 220 F.3d 1134, (9th Cir.2000). Ripeness becomes an issue when a case is anchored in
24 future events that may not occur as anticipated, or at all. Pacific Gas & Elec. Co. v. State Energy
25 Resources Conservation & Dev. Comm'n, 461 U.S. 190, 200-01 (1983); Dames & Moore v. Regan,
26 453 U.S. 654, 689 (1981). Ripeness is, thus, a question of timing. Regional Rail Reorganization Act
27 Cases, 419 U.S. 102, 139 (1974).

28 Petitioner's claim is not ripe for adjudication because the hearing has not yet occurred. No

1 case or controversy currently exists, and there is a real likelihood that Petitioner’s claim will never
2 present a case or controversy. The Supreme Court has cautioned against courts “entangling
3 themselves in abstract disagreements.” Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49
4 (1967). Therefore, the claim must be dismissed.

5 **RECOMMENDATION**

6 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas
7 corpus be DISMISSED with leave to amend for failure to state a claim cognizable under 28
8 U.S.C. § 2254.

9 This Findings and Recommendation is submitted to the Honorable Lawrence J. O’Neill,
10 United States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and
11 Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
12 California.

13 Within thirty (30) days after being served with a copy, any party may file written objections
14 with the court and serve a copy on all parties. Such a document should be captioned “Objections to
15 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
16 filed within ten (10) court days (plus three days if served by mail) after service of the objections.
17 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The
18 parties are advised that failure to file objections within the specified time may waive the right to
19 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21
22 IT IS SO ORDERED.

23 **Dated: June 20, 2008**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE