

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

My Ngo v. Tammy Campbell, et al.

Ngo v. Campbell, No. 1:23-cv-01423-KES-SKO (E.D. Cal. Aug. 24, 2025) · No. 1:23-cv-01423-KES-SKO ·

Decided August 25, 2025

OPINION

(PC) Ngo v. Campbell

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MY NGO, Case No.: 1:23-cv-01423-KES-SKO 12 Plaintiff, ORDER DENYING
PLAINTIFF'S MOTION

FOR A PRELIMINARY INJUNCTION AND

13 v. TO APPOINT COUNSEL AND ADOPTING

FINDINGS AND RECOMMENDATIONS TO

14 TAMMY CAMPBELL, et al., DISMISS FIRST AMENDED COMPLAINT

FOR FAILURE TO STATE A CLAIM UPON

15 Defendants. WHICH RELIEF CAN BE GRANTED

16 Docs. 18, 19

17 18 Plaintiff My Ngo is proceeding pro se and in forma pauperis in this action filed pursuant 19
to 42 U.S.C. § 1983. This matter was referred to a United States magistrate judge pursuant to 28
20 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 On October 15, 2024, the assigned magistrate
judge issued findings and 22 recommendations, recommending the action be dismissed for
plaintiff's failure to state a claim 23 upon which relief can be granted. Doc. 19. Specifically, the
magistrate judge found that (1) 24 plaintiff's claim amounts to a challenge to his conviction and
sentence and may not be pursued in 25 this § 1983 action, and (2) plaintiff's claim is time barred.
Id. at 4–9. Those findings and 26 recommendations were served on plaintiff and contained notice
that any objections thereto were 27 due within 14 days after service. Id. at 8–9. Plaintiff filed
objections on October 25, 2024. Doc. 20. 1 In accordance with the provisions of 28 U.S.C. §
636(b)(1), this Court has conducted a de 2 novo review of this case. Having carefully reviewed the
file, including plaintiff's objections, the 3 Court finds the findings and recommendations to be
supported by the record and proper analysis. 4 In the objections, plaintiff asserts that he is not
challenging his conviction and sentence, 5 but rather, the process by which defendant Campbell
allegedly failed to furnish him with a copy 6 of his judgment of conviction. Notwithstanding that
characterization, the objections continue to 7 assert the same challenges to plaintiff's confinement

that were correctly found to be barred in the 8 findings and recommendations. See *Preiser v. Rodriguez*, 411 U.S. 475, 489–90 (1973); *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994); see also *Price v. McNeil*, 340 F. App’x 581, 583–84 (11th Cir. 2009) (challenge to legality of confinement barred under *Heck* even where liberally construed as challenge to underlying procedure rather than results). Plaintiff provides no basis to overturn the magistrate judge’s well-reasoned conclusion that “[n]either section 1207, nor section 1213 of the California Penal Code, require Defendant Campbell to furnish Plaintiff with a copy of the judgment of conviction.” Doc. 19 at 6; see also *Tsetse v. Campbell*, No. 1:24-CV-00275-CDB (PC), 2024 WL 4894622, at *4 (E.D. Cal. Nov. 26, 16 2024) (“There is no requirement in the applicable California law that mandates that a warden, such as Defendant, must provide a copy of the judgment of conviction on request to a prisoner, such as Plaintiff.”). Plaintiff continues to rely on *People v. Howard*, 72 Cal. App. 561 (Cal. Ct.

19 App. 1925) to suggest otherwise, but as the findings and recommendations note, that case 20 concerned the admissibility of a certified copy of a judgment of conviction and does not support 21 plaintiff’s argument.¹ Doc. 19 at 6. *Ex parte Taube*, another case cited in the objections, also 22 does not support plaintiff’s argument; that case discussed the requirements of section 1213 of the 23 California Penal Code as applied to subsequent orders regarding concurrent sentencing terms. 24 See *Ex parte Taube*, 78 Cal. App. 2d 142 (1947). 25 /// 26 1 Additionally, Howard suggests that it is “the duty of the warden to furnish on demand a certified 27 copy of the commitment in his custody” in connection with trial, not at any time the prisoner requests. Howard, 72 Cal. App. at 564. The court in Howard did not identify the source of the 1 The objections represent that plaintiff became aware that his judgment of conviction failed 2 to comply with section 1213 of the California Penal Code on April 2, 2022, and that he exhausted 3 his administrative remedies concerning this claim on June 24, 2022. These dates do not 4 undermine the magistrate judge’s conclusion that plaintiff’s claims are time barred. “For actions 5 under 42 U.S.C. § 1983, courts apply the forum state’s statute of limitations for personal injury 6 actions. California has a two-year statute of limitations for personal injury actions.” *Klein v. City of Beverly Hills*, 865 F.3d 1276, 1278 (9th Cir. 2017) (internal alternations, citations, and 8 quotation marks omitted). “Federal law determines when a civil rights claim accrues. Under 9 federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is 10 the basis of the action.” *Maldonado v. Harris*, 370 F.3d 945, 955 (9th Cir. 2004) (internal citation 11 and quotation mark omitted). Under the “discovery rule,” the statute only begins to run once a 12 plaintiff knows of his injury and its cause. *Bibeau v. Pac. Nw. Rsch. Found. Inc.*, 188 F.3d 1105, 13 1108 (9th Cir. 1999). “The discovery rule requires the plaintiff to be diligent in discovering the 14 critical facts of the case.” *Klein*, 865 F.3d at 1278. “As a result, a plaintiff who did not actually 15 know that his rights were violated will be barred from bringing his claim after the running of the 16 statute of limitations, if he should have known in the exercise of due diligence.” *Bibeau*, 188 17 F.3d at 1108. 18 The basis for this action is plaintiff’s contention that he is being

unlawfully imprisoned 19 because the warden of the facility at which he is confined did not provide him with a certified 20 copy of his judgment of conviction. The magistrate judge appropriately found that plaintiff was 21 admitted to the California Department of Corrections and Rehabilitation on July 20, 2004, and 22 that any judgement of conviction would have issued at that time. Doc. 19 at 7. Thus, plaintiff's 23 alleged injury regarding his judgment of conviction accrued more than 20 years ago and the 24 statute of limitations for his claim has expired. Id. at 7–8 (collecting cases). Because plaintiff 25 represents that he delayed more than 17 years before attempting to discover the critical facts of 26 his case, the discovery rule will not save his time-barred claim. Cf. Klein, 865 F.3d at 1279–80 27 (detailing the plaintiff's numerous and varied attempts to pursue the factual basis for his claim). 1 In sum, plaintiff's objections fail to meaningfully address the findings and 2 || recommendations and otherwise lack any additional allegations sufficient to plausibly state a 3 | claim under 42 U.S.C. § 1983 against any defendant. 4 Plaintiff's pending motion for a preliminary injunction and for the appointment of 5 | counsel, Doc. 18, is denied. Plaintiff has failed to satisfy the requirements for injunctive relief 6 | and has not made the requisite showing of exceptional circumstances justifying the voluntary 7 | assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Winter v. Nat. Res. Def. Council, Inc., 8 | 555 U.S. 7, 20 (2008); Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009). 9 Accordingly: 10 1. Plaintiff's motion for a preliminary injunction and for the appointment of counsel,

11 Doc. 18, is denied;

12 2. The findings and recommendations issued on October 15, 2024, Doc. 19, are 13 adopted in full; 14 3. The action is dismissed for plaintiffs failure to state a claim upon which relief can 15 be granted; and 16 4. The Clerk of the Court is directed to close this case. 17 18

19 | IT IS SO ORDERED. _

20 Dated: _ August 24, 2025 4A .

UNITED STATES DISTRICT JUDGE

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