

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Ascencion Gomez v. Brian Cates

No. 1:25-cv-00729-KES-SAB-HC (E.D. Cal. Oct. 3, 2025) · No. 1:25-cv-00729-KES-SAB-HC · Decided
October 3, 2025

OPINION

Cates

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

9 10 ASCENCION GOMEZ, Case No. 1:25-cv-00729-KES-SAB-HC 11 Petitioner, FINDINGS
AND RECOMMENDATION TO

GRANT RESPONDENT’S MOTION TO

12 v. DISMISS AND DISMISS PETITION

13 BRIAN CATES, (ECF No. 12)

14 Respondent. 15

16 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus 17
pursuant to 28 U.S.C. § 2254. 18 I.

19 BACKGROUND

20 Petitioner is currently in the custody of the California Department of Corrections and 21
Rehabilitation serving consecutive terms of life with the possibility of parole for first-degree 22
murder and attempted murder. (ECF No. 12-1 at 6.1) On June 16, 2025, Petitioner filed the 23
instant petition for writ of habeas corpus, challenging a prison disciplinary proceeding in which 24
he was found guilty of battery on a peace officer and penalized with a 150-day loss of custody 25
credit. (ECF No. 1 at 1.) Petitioner asserts the following claims for relief: (1) failure to allow 26
Petitioner to present relevant documentary evidence at disciplinary hearing; and (2) failure to 27
allow Petitioner to ask relevant questions at the disciplinary hearing. (ECF No. 1 at 5–9.) 1 II.

2 DISCUSSION

3 A. Federal Habeas Jurisdiction 4 By statute, federal courts “shall entertain an application for a
writ of habeas corpus in 5 behalf of a person in custody pursuant to the judgment of a State court
only on the ground that he 6 is in custody in violation of the Constitution or laws or treaties of the
United States.” 28 U.S.C. 7 § 2254(a). A claim falls within the “core of habeas corpus” when a
prisoner challenges “the fact 8 or duration of his confinement” and “seeks either immediate
release from that confinement or the 9 shortening of its duration.” Preiser v. Rodriguez, 411 U.S.

475, 489 (1973). The Ninth Circuit 10 has adopted a rule that a “state prisoner’s claim [that] does not lie at ‘the core of habeas corpus’ 11 . . . must be brought, ‘if at all,’ under § 1983.” *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 12 2016) (en banc) (quoting *Preiser*, 411 U.S. at 487; *Skinner v. Switzer*, 562 U.S. 521, 535 n.13 13 (2011)). Therefore, if “success on [Petitioner]’s claims would not necessarily lead to his 14 immediate or earlier release from confinement, [Petitioner]’s claim does not fall within ‘the core 15 of habeas corpus,’ and he must instead bring his claim under § 1983.” *Nettles*, 830 F.3d at 935 16 (quoting *Skinner*, 562 U.S. at 535 n.13). 17 In *Nettles*, a California prisoner serving a life sentence challenged a disciplinary 18 violation. The Ninth Circuit held that *Nettles*’s claim did not fall within the core of habeas 19 corpus, stating: 20 Success on the merits of *Nettles*’s claim would not necessarily lead to immediate or speedier release because the expungement of the challenged disciplinary 21 violation would not necessarily lead to a grant of parole. Under California law, the parole board must consider “[a]ll relevant, reliable information” in 22 determining suitability for parole. Cal. Code Regs. tit. 15, § 2281(b). A rules violation is merely one of the factors shedding light on whether a prisoner 23 “constitutes a current threat to public safety,” *In re Lawrence*, 44 Cal.4th 1181, 82 Cal.Rptr.3d 169, 190 P.3d 535, 553 (2008). Because the parole board has the 24 authority to deny parole “on the basis of any of the grounds presently available to it,” *Ramirez*, 334 F.3d at 859, the presence of a disciplinary infraction does not 25 compel the denial of parole, nor does an absence of an infraction compel the grant of parole. 26 Here, the panel of the Board of Parole Hearings considered a range of relevant 27 factors bearing on *Nettles*’s future dangerousness, including his inability to learn from prior imprisonments, his lack of insight and remorse regarding his crimes, 1 discussed at great length the factors that led him to conclude that *Nettles* was not suitable for parole, including the heinous nature of *Nettles*’s crime of conviction, 2 a psychological report on *Nettles*, and *Nettles*’s attitude. While the presiding commissioner did note the multiple rules violations reports issued to *Nettles*, his 3 remarks gave no indication that *Nettles*’s 2008 violation report was an important, let alone determinative, factor in his decision. 4 Under California law and the circumstances of *Nettles*’s case, the panel could 5 deny parole to *Nettles* even if he succeeded in expunging the 2008 rules violation report. Furthermore, since the decision to grant an earlier release date on the basis 6 of new information is placed in the discretion of the parole board, Cal. Penal Code § 3041.5(d)(1), success on *Nettles*’s claim would not even necessarily lead to an 7 earlier parole hearing. 8 Because success on *Nettles*’s claims would not necessarily lead to his immediate or earlier release from confinement, *Nettles*’s claim does not fall within “the core 9 of habeas corpus,” *Skinner*, 562 U.S. at 535 n. 13, 131 S.Ct. 1289, and he must instead bring his claim under § 1983. 10 11 *Nettles*, 830 F.3d at 934–35. 12 Petitioner contends that his case is distinguishable from *Nettles*. Petitioner argues that in 13 *Nettles*, the Board of Parole Hearings (“BPH”) commissioner gave no indication that the 14 violation report was an important factor in his decision denying parole. In contrast, the BPH 15 commissioner in Petitioner’s case “used the rules violation report in question to outweigh the 16 great weight they had to give to my youthful

offender factors; to nullify the progress I made in 17 groups, education, and vocations; to qualify my personal change as an aggravating factor, and to 18 label me an unreasonable risk; and to demonstrate a nexus to current dangerousness.” (ECF No. 19 13 at 3.) The Court finds that Petitioner has not established that the challenged violation report 20 was a determinative factor in the parole denial such that expungement of the challenged 21 disciplinary violation would necessarily lead to a grant of parole. Although the presiding 22 commissioner mentioned the 2022 violation report numerous times, and it appears to have been 23 an important factor in the decision, the parole denial was also based on other factors, such as 24 Petitioner’s lack of self-control, the callous nature of the crime, disregard of the impact on his 25 victims in the community, and the Comprehensive Risk Assessment (“CRA”).² (ECF No. 12-1 at 26 2 [T]he psychologists in the Board’s Forensic Assessment Division prepare CRA reports for use in parole hearings. In doing so, the psychologists review the inmate’s file, interview the inmate, and 27 employ structured risk assessment tools used by mental health professionals to determine the risk of violence in incarcerated individuals. Based on this information, the psychologists classify the 1 37, 39.) Accordingly, the Court finds that Petitioner’s claims are not cognizable in federal habeas 2 corpus.³ 3 B. Conversion to § 1983 Civil Rights Action 4 “If the complaint is amenable to conversion on its face, meaning that it names the correct 5 defendants and seeks the correct relief, the court may recharacterize the petition so long as it 6 warns the pro se litigant of the consequences of the conversion and provides an opportunity for 7 the litigant to withdraw or amend his or her complaint.” *Nettles*, 830 F.3d at 936 (quoting *Glaus v. Anderson*, 408 F.3d 382, 388 (7th Cir. 2005)). The Court notes, however, that habeas corpus 9 and prisoner civil rights actions differ in a variety of respects, such as the proper defendants, 10 filing fees, exhaustion requirements, and restrictions on future filings (e.g., the Prison Litigation 11 Reform Act’s three-strikes rule). *Nettles*, 830 F.3d at 936 (citing *Robinson v. Sherrod*, 631 F.3d 12 839, 841 (7th Cir. 2011); *Glaus*, 408 F.3d at 388). 13 The Court finds that it would be inappropriate to construe the habeas petition as a § 1983 14 complaint. The Court notes that the filing fee for § 1983 civil rights cases is \$350, and Petitioner 15 is required to pay the full amount by way of deductions from income to Petitioner’s trust 16 account, even if granted in forma pauperis status.⁴ See 28 U.S.C. § 1915(b)(1). Moreover, 17 Petitioner names the warden of the facility in which he is housed as Respondent in this matter. It 18 is unclear whether the warden would be the proper defendant in a civil rights action challenging 19 Petitioner’s disciplinary proceeding on procedural grounds. See *Ashcroft v. Iqbal*, 556 U.S. 662, 20 “circumstances about the crime, and the person’s prior history and record,” as well as “expert 21 analysis” on risk assessment. *Gay v. Parsons*, 61 F.4th 1088, 1090 (9th Cir. 2023). Petitioner declined to participate in an interview with the 22 psychologist preparing his CRA report. (ECF No. 12-1 at 201–02.) 3 Respondent also moves to dismiss the petition as untimely, arguing that Petitioner’s 50-day delay between the 23 superior court’s denial and the filing of a state habeas petition in the California Court of Appeal and the 32-day delay between the California Court of Appeal’s denial and the filing of a state habeas petition in the California

Supreme 24 Court constitutes “82 days of untolled gap time” not justified by Petitioner. (ECF No. 14 at 3.) However, “as long as the prisoner timely files another petition in a higher court, AEDPA’s statute of limitations is tolled for ‘the days 25 between (1) the time the lower state court reached an adverse decision, and (2) the day [the prisoner] filed a petition in the higher state court.’” Valdez v. Montgomery, 918 F.3d 687, 690 (9th Cir. 2019) (quoting Evans v. Chavis, 546 U.S. at 189, 193 (2006)). “This is often referred to as ‘gap’ tolling.” Valdez, 918 F.3d at 690. The California Supreme Court has held that “[a] new petition filed in a higher court within 120 days of the lower court’s denial will never be considered untimely due to gap delay.” Robinson v. Lewis, 9 Cal. 5th 883, 900 (2020). Therefore, 27 Petitioner is entitled to the 82 days of gap tolling and thus, the petition is timely. Accordingly, dismissal is not warranted on this ground. 1 | 676 (2009) ¶ “[A] plaintiff must plead that each Government-official defendant, through the 2 | official’s own individual actions, has violated the Constitution.”). This conclusion, however, 3 | does not preclude Petitioner from pursuing his claims in a properly filed civil action brought 4 | pursuant to 42 U.S.C. § 1983. 5 Il.

6 RECOMMENDATION

7 Based on the foregoing, the Court HEREBY RECOMMENDS that Respondent’s motion 8 | to dismiss (ECF No. 12) be GRANTED in part and the petition be dismissed for failure to state a 9 | cognizable federal habeas claim. 10 This Findings and Recommendation is submitted to the assigned United States District 11 | Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b) (1)(B) and Rule 304 of the Local 12 | Rules of Practice for the United States District Court, Eastern District of California. Within 13 | THIRTY (30) days after service of the Findings and Recommendation, any party may file 14 | written objections with the Court, limited to fifteen (15) pages in length, including any 15 | exhibits. Such a document should be captioned “Objections to Magistrate Judge’s Findings and 16 | Recommendation.” Replies to the objections shall be served and filed within fourteen (14) days 17 | after service of the objections. The assigned District Judge will then review the Magistrate 18 | Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file 19 | objections within the specified time may waive the right to appeal the District Court’s order. 20 | Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 21 | 1391, 1394 (9th Cir. 1991)). 22

73 IT IS SO ORDERED. F- 2 Se

24 | Dated: _ October 3, 2025 _ ofS

STANLEY A. BOONE

25 United States Magistrate Judge 26 27 28