



(HC) Alvarado v. People of The State of California

2015 | Cited 0 times | E.D. California | June 15, 2015

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ALVARADO,

Petitioner, v. PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

No. 2:15-cv-1197 CKD P

ORDER & FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF Nos. 1, 5.) On June 2, 2015, this action was transferred to this district. (ECF No. 6.) In February 2004, petitioner was sentenced to a state prison term of eleven years and assessed a restitution fine of \$2,200. (ECF No. 1 at 2, 9.) Petitioner challenges his restitution fine, imposed under state law, which he asserts he is unable to pay. (Id. at 2-3.) is not cognizable on federal habeas review as it does not affect the fact See *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (limiting § 2254 habeas to challenges to fact or duration of custody); *United States v. Thiele*, 314 F.3d 399, 400 (9th Cir. 2002) (finding challenge to restitution fine not cognizable on habeas review). Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 provides for the foregoing reasons, the petition should be dismissed pursuant to Rule 4. Accordingly, IT IS HEREBY ORDERED that the Clerk of Court is directed to assign a district judge to this action. IT IS HEREBY RECOMMENDED that the petition be summarily dismissed pursuant to Rule 4 of the Rules Governing Habeas Corpus Cases under Section 2254. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned

objections shall be served and filed within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). Dated: June 15, 2015

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----- CAROLYN K. DELANEY UNITED STATES
MAGISTRATE JUDGE

