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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM M. OBERPRILLER,

Petitioner - Appellant,

v.

C. NOLL, Warden,

Respondent - Appellee.

No. 10-15065

D.C. No. 3:09-cv-05215-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

California state prisoner William M. Oberpriller appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition without

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

prejudice for lack of jurisdiction. We have jurisdiction under 28 U.S.C. § 2253,¹ and we affirm.

The district court correctly concluded that Oberpriller could not proceed under § 2254 because he received only a “counseling chrono” for minor misconduct. *See Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003) (stating that “habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner’s sentence”). Accordingly, the district court did not err in dismissing Oberpriller’s habeas petition for lack of jurisdiction.

AFFIRMED.

¹ We certify for appeal, on our own motion, the issue of whether the district court properly dismissed Oberpriller’s petition for lack of jurisdiction.