

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL A. THOMPSON,) 1:06-cv-00652-AWI-TAG HC
Petitioner,)
) ORDER TO AMEND PETITION WITHIN
) THIRTY DAYS
) (Doc. 1)
v.)
) ORDER DIRECTING CLERK OF COURT TO
) SEND PETITIONER BLANK FORM PETITION
STATE OF CALIFORNIA,)
Respondent.)

Petitioner is a prisoner proceeding pro se with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The instant petition was filed on May 25, 2006. (Doc. 1).

DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Otherwise, the Court will order Respondent to respond to the petition. Rule 5 of the Rules governing § 2254 Cases. Here, the Court is unable to conduct its mandated preliminary review because Petitioner has failed to allege sufficient facts upon which to conduct such a review.

A. Filling Out the Form.

A federal court may only grant a petition for writ of habeas corpus if a petitioner can show

1 that “he is in custody in violation of the Constitution” 28 U.S.C. § 2254 (a). A petition for writ
2 of habeas corpus must therefore specify the grounds for relief. Rule 2(c) of the Rules Governing
3 Section 2254 Cases. The petition must also allege the facts surrounding the petitioner’s
4 incarceration. 28 U.S.C. § 2242. The petitioner must make specific factual allegations that would
5 entitle him to habeas corpus relief if they are true. O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
6 1990); United States v. Poopola, 881 F.2d 811, 812 (9th Cir. 1989).

7 In addition, a petition presented in *pro se* **must** be upon the form approved by the Court.
8 Rule 2 of the Rules Governing Section 2254 Cases; Local Rule 81-190. This rule ensures that all
9 information needed is before the Court. Each ground for relief must be clearly stated and allege what
10 federal constitutional violation has occurred, along with providing facts that support the grounds for
11 relief. If a petition contains no grounds entitling the petitioner to habeas corpus relief, the court must
12 dismiss the petition. Rule 4 of the Rules Governing Section 2254 Cases.

13 Filing an incomplete form petition, or, as is the case here, failure to use the form at all, is
14 inadequate and requires the Court to expend considerable time and resources attempting to determine
15 which claims petitioner seeks to raise before this Court and to determine basic facts about
16 Petitioner’s case that will enable the Court to properly screen the case as required by Rule 4. It is
17 unreasonable to expect the Court to take on such a task when the responsibility to inform the Court
18 lies solely with Petitioner.¹ ***The proper use of the form petition results in administrative
convenience of benefit to both Petitioner and the Court.***

20 Here, Petitioner has submitted various typewritten pages that are not upon the Court-
21 approved form. In so doing, Petitioner has failed to advise the Court of basic facts such as: (1) when
22 he was convicted and in what state court; (2) the crimes for which he was convicted; (3) the sentence
23 imposed; (4) the date on which he was convicted; (5) the dates during which any direct review of his
24 case (i.e., an appeal) was pending in the state appellate courts; and (6) the dates of filing and decision
25 for any state habeas petitions filed in connection with the claims in this case.

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28 ¹Petitioners are not precluded from submitting attachments or exhibits to the petition, however, the Court will not
determine a petitioner’s claims for him based solely on his attachments.

1 Space for all of this information is provided on the Court-approved form. The information is
2 critical for the Court to perform the preliminary screening of the petition because, in conducting such
3 a screening, the Court must determine whether the petition contains only claims that have been fully
4 exhausted in the California Supreme Court. Moreover, the Court must determine whether Petitioner
5 has filed his petition within the one-year statute of limitations for filing such petitions. Finally, the
6 Court cannot even begin to determine whether venue is proper without knowing in which state court
7 petitioner was convicted.² Had Petitioner used the form provided by this Court, the need for all of
8 this information would have been evidence. As it is, the Court cannot proceed further with this case
9 until Petitioner submits an amended petition, on the Court-approved form, providing the requisite
10 information.

11 B. Naming A Proper Respondent.

12 A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer
13 having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254
14 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme
15 Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated
16 petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has
17 "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.
18 1992); see also, Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). However,
19 the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894;
20 Stanley, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper respondent is his
21 probation or parole officer and the official in charge of the parole or probation agency or state
22 correctional agency. Id.

23 Here, Petitioner has named as Respondent the "State of California". However, the State of
24 California is not the warden of the institution where Petitioner is confined and, thus, does not have
25 day-to-day control over Petitioner. Petitioner is incarcerated at California Correctional Institution,

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27 ²Venue is proper in this Court for a petition challenging an inmate's conviction or sentence only if Petitioner was
28 convicted in a state court that lies within the physical jurisdiction of this Court. If Petitioner was convicted in a state court
that lies within another federal district (e.g., the County of Los Angeles, which lies within the jurisdiction of the Central
District of California), Petitioner must file his petition in that jurisdiction.

1 Tehachapi, California. The warden at that facility is Fernando Gonzalez.

2 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for
3 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326
4 (9th Cir. 1970); see also, Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).
5 However, the Court will give Petitioner the opportunity to cure this defect by amending the petition
6 to name a proper respondent, such as the warden of his facility. See West v. Louisiana, 478 F.2d
7 1026, 1029 (5th Cir.1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir.1975) (en banc)
8 (allowing petitioner to amend petition to name proper respondent); Ashley v. State of Washington,
9 394 F.2d 125 (9th Cir. 1968) (same).

10 Accordingly, it is HEREBY ORDERED:

11 1. Petitioner SHALL FILE AN AMENDED PETITION using the form provided by the
12 Clerk of the Court. Petitioner must state each ground for relief clearly and concisely,
13 being sure to allege a federal constitutional violation as a basis for each ground.
14 Petitioner must fill out the form petition **in its entirety**, listing any efforts he has
15 made, either on direct appeal of his conviction or in state habeas corpus proceedings,
16 to challenge his conviction or sentence, and list the dates and grounds raised at each
17 court and the date each court ruled on each petition for writ of habeas corpus.
18 Petitioner must also name the proper respondent, as indicated in the body of this
19 order. The amended petition must be filed within thirty (30) days of the date of
20 service of this order and should be clearly and boldly titled "AMENDED
21 PETITION," contain the appropriate case number, and be an original signed under
22 penalty of perjury. Petitioner should also note that every pleading to which an
23 amendment is permitted *must be retyped or rewritten and filed so that it is complete*
24 *in itself without reference to the prior or superseded pleading*. Local Rule 15-220.
25 2. The Clerk of Court is DIRECTED to send Petitioner a blank form petition for federal
26 prisoners filing pursuant to § 2254.

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1 Petitioner is forewarned that his failure to comply with this order may result in a
2 Recommendation that the Petition be dismissed pursuant to Local Rule 11-110.
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4 IT IS SO ORDERED.

5 Dated: February 5, 2008

6 _____/s/ Theresa A. Goldner
7 _____UNITED STATES MAGISTRATE JUDGE
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