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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL C. COURTOIS,)	1:07-CV-00454 OWW JMD HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION
)	REGARDING PETITION FOR WRIT OF
v.)	HABEAS CORPUS
)	
BILL LOCKYEAR,)	
)	
Respondent.)	

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

DISCUSSION

A. Procedural Grounds for Summary Dismissal

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the petition has been filed. A petition for habeas corpus should not be dismissed without leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

1 **B. Failure to State a Discernable Claim**

2 Petitioner must state his claim with sufficient specificity. *See Hendricks v. Vasquez* 908 F.2d
3 at 491-92; *Wacht v. Cardwell*, 604 F.2d 1245, 1246-47 (9th Cir. 1979). Rule 2(c) of the Rules
4 Governing Section 2254 Cases (emphasis added) states:

5 The petition must:

- 6 (1) *specify all the grounds for relief available to the petitioner;*
7 (2) *state the facts supporting each ground;*
8 (3) state the relief requested;
9 (4) be printed, typewritten, or legibly handwritten; and
10 (5) be signed under penalty of perjury by the petitioner or by a person authorized to
11 sign it for the petitioner under 28 U.S.C. § 2242.

12 Petitioner raises four claims, of which Grounds Two and Three have failed to state a discernable
13 claim. Both claims lack any specificity as to the grounds for relief and fail to state supporting facts.

14 Ground Two states “Denial of U.S. Const rights to Fair and speedy trial—violation of statute
15 of limitation.” For supporting facts Petitioner alleges, “As I am crime victim of conspiracy they start
16 fight over whether I can have fair and speedy trial: they are appointed public defenders: refuse to
17 allow I fair and speedy trial. So as to frame-up I in big act of deception as to hide frame up! By
18 corrupt and prejudice courts: old enemys [sic] etc.” The Court cannot discern a claim from the
19 information provided. Petitioner has failed to support his claims with sufficient facts.

20 In his third ground for relief, Petitioner alleges a violation of his constitutional right to
21 “attorney of choice” but also writes “no-waiver.” For supporting facts, Petitioner merely states his
22 contentions with no additional description or supporting facts. Petitioner writes, “Intentional and
23 unjustifiable interference with the right to obtain fia rand judicial review of the right of I jailed under
24 false pretenses! And false and illegal confinement. As liberty issue! Right to attorney is protected
25 by Federal Const. Law! And fair and impartial appeal in federal courts.” It is not the duty of federal
26 courts to try to second guess the meanings of statements and intentions of petitioners. Rather the
27 duty is upon the individual who asserts a denial of his constitutional rights to come forth with a
28 statement of sufficient clarity and sufficient supporting facts to enable a court to understand his
argument and to render a decision on the matter.

 Furthermore, Petitioner’s claims pertaining to Ground Two and Three are completely
conclusory and unsupported by any evidence. "Conclusory allegations which are not supported by a

1 statement of specific facts do not warrant habeas relief." James v. Borg, 24 F.3d 20, 29 (9th Cir.
2 1994); Jones v. Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995) (holding that conclusory allegations
3 made with no reference to the record or any document do not merit habeas relief); Allard v. Nelson,
4 423 F.2d 1216, 1217 (9th Cir. 1970) (Conclusory allegations in a habeas petition fail to state a claim
5 and do not suffice to shift the burden to the state to answer an order to show cause.); Campbell v.
6 Wood 18 F.3d 662, 679 (9th Cir. 1994), *citing* Boehme v. Maxwell, 423 F.2d 1056, 1058 (9th Cir.
7 1970) ("An evidentiary hearing is not required on allegations that are "conclusory and wholly devoid
8 of specifics."").

9 Moreover, Rule 4 of the Rules Governing Section 2254 Cases explicitly allows the district
10 court to dismiss summarily a habeas petition when no claim for relief is stated. *See* O'Bremski v.
11 Maass, 915 F.2d 418, 420 (9th Cir.1990.) Notice pleading is insufficient; the petitioner must state
12 sufficient facts. *See id.* (*citing* Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)).

13 C. Failure to State a Federal Claim

14 Petitioner fails to state a claim with respect to Grounds One and Four. Ground One fails to
15 state a cognizable claim as a federal district court cannot grant habeas corpus relief on the ground
16 that evidence was obtained by an unconstitutional search and seizure if the state court has provided
17 the petitioner with a "full and fair opportunity to litigate" the Fourth Amendment issue. Stone v.
18 Powell, 428 U.S. 465, 494 (1976); Woolery v. Arvan, 8 F.3d 1325, 1326 (9th Cir. 1993), *cert denied*,
19 511 U.S. 1057 (1994). The only inquiry this Court can make is whether Petitioner had a fair
20 opportunity to litigate his claim, not whether Petitioner did litigate nor even whether the court
21 correctly decided the claim. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 899 (9th Cir. 1996); *see also*,
22 Gordon v. Duran, 895 F.2d 610, 613 (9th Cir. 1990) (holding that because Cal. Penal Code § 1538.5
23 provides opportunity to challenge evidence, dismissal under Stone was necessary). In this case, there
24 is no allegation by Petitioner that he was denied a fair opportunity to litigate his claim. Pursuant to
25 Stone v. Powell, Petitioner has failed to present a cognizable federal claim on this ground.

26 Petitioner's fourth ground for relief fails to state a cognizable claim. Petitioner claims a
27 violation of the Double Jeopardy Clause based on a previous mistrial. For supporting facts,
28 Petitioner alleges that, "trial court started and defense attorney withdrew on own motion. District

1 attorney requested mistrial. Defendant objected and requested to continue pro-per[.] Judge
2 declare[d] mistrial!” Retrying a criminal defendant is not barred by the Double Jeopardy Clause of
3 the Fifth Amendment where a mistrial was granted out of manifest necessity. *See Arizona v.*
4 *Washington*, 434 U.S. 497, 509 (1978); *see also United States v. Hernandez-Guardado*, 228 F.3d
5 1017, 1029 (9th Cir. 2000). A withdrawal of counsel may constitute manifest necessity. *United*
6 *States v. Williams*, 717 F.2d 473, 475 (9th Cir. 1983). Therefore, Grounds One and Four of the
7 petition must be dismissed.

8 **D. Conclusion**

9 The instant petition must be dismissed for the above-stated reasons. Petitioner will be given
10 an opportunity to file a first amended petition to cure the deficiencies. Petitioner is advised that
11 failure to file a petition in compliance with this order (i.e., a completely filled-out petition with
12 cognizable federal claims clearly stated and with sufficient facts to support those claims) within the
13 allotted time will result in a recommendation that the petition be dismissed and the action be
14 terminated. Petitioner is advised that the amended petition should be titled “First Amended Petition”
15 and must reference the instant case number.

16 **RECOMMENDATION**

17 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas
18 corpus be DISMISSED with leave to amend for failure to state a claim cognizable under 28
19 U.S.C. § 2254.

20 This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger, United
21 States District Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule
22 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
23 California.

24 Within thirty (30) days after being served with a copy, any party may file written objections
25 with the court and serve a copy on all parties. Such a document should be captioned “Objections to
26 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served and
27 filed within ten (10) court days (plus three days if served by mail) after service of the objections.
28 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The

1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: February 13, 2009 /s/ John M. Dixon
UNITED STATES MAGISTRATE JUDGE