

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID CHARLES THATCHER,

1: 07 CV 00725 AWI DLB HC

Petitioner,

ORDER TO SHOW CAUSE WHY PETITION
SHOULD NOT BE DISMISSED FOR LACK
OF JURISDICTION

v.

UNKNOWN,

Respondent.

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

Petitioner filed the instant petition on May 16, 2007. The Court has conducted a preliminary review of the Petition and finds it is without jurisdiction to hear the case as Petitioner has named an improper respondent. It does appear from the Petition that Petitioner is confined at High Desert State Prison in Susanville he has failed to name the warden Tom Felker or any other person as the Respondent. Petitioner may remedy this failure by amending his Petition to include a Respondent.

A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is

1 incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v.
2 United States, 982 F.2d 378, 379 (9th Cir. 1992); see, also, Stanley v. California Supreme Court,
3 21 F.3d 359, 360 (9th Cir. 1994). However, the chief officer in charge of state penal institutions
4 is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on
5 probation or parole, the proper respondent is his probation or parole officer and the official in
6 charge of the parole or probation agency or state correctional agency. Id.

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

15 Accordingly, the Court HEREBY ORDERS:

- 16 1. Petitioner SHALL SHOW CAUSE why the Petition should not be dismissed by
17 AMENDING the Petition to name a proper respondent within thirty (30) days of
18 the date of service of this order. To comply with this directive petitioner need only
19 submit a pleading titled "Amendment to Petition" in which he amends the petition
20 to name a proper respondent. As noted above, that individual is the person having
21 day to day custody over petitioner - usually the warden of the institution where he
22 is confined. The Amendment should be clearly and boldly captioned as such and
23 include the case number referenced above, and be an original signed under penalty
24 of perjury.

25 IT IS SO ORDERED.

26 **Dated: May 23, 2007**

27 **/s/ Dennis L. Beck**
28 UNITED STATES MAGISTRATE JUDGE