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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

| | | |
|---------------------|---|--------------------------------|
| ALBERT LEE FUENTES, |) | 1:07-CV-01034 LJO NEW (DLB) HC |
| |) | |
| Petitioner, |) | ORDER DISMISSING PETITION WITH |
| |) | LEAVE TO AMEND |
| v. |) | |
| |) | [Doc. #1] |
| THE PEOPLE, |) | |
| |) | |
| Respondent. |) | |

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This action has been referred to this Court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72-302.

On July 19, 2007, Petitioner filed a petition for writ of habeas corpus in this Court.

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

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

5 B. Incomplete Petition

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

9 The petition must:

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

16 The instant petition is incomplete. Petitioner fails to specify any grounds for relief, the facts
17 supporting each ground, or the relief requested. Therefore, it must be dismissed. Petitioner will be
18 given an opportunity to file an amended petition. Petitioner is advised that failure to file a complete
19 petition within the time allotted will result in a recommendation that the petition be dismissed and
20 the action be terminated. Petitioner is advised that the amended petition should be titled "First
21 Amended Petition" and reference the instant case number.

22 C. Failure to Name a Proper Respondent

23 In this case, Petitioner names "The People" as Respondent in this matter. Petitioner is
24 incarcerated at Corcoran State Prison. The warden at that facility is Derral G. Adams.

25 A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer
26 having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254
27 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme
28 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 incarcerated because the warden has
"day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.
1992); see also, Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). However,

1 the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894;
2 Stanley, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper respondent is his
3 probation or parole officer and the official in charge of the parole or probation agency or state
4 correctional agency. Id.

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

13 **ORDER**

14 Accordingly, the petition for writ of habeas corpus is hereby DISMISSED. Petitioner is
15 GRANTED thirty (30) days from the date of service of this order to file an amended petition in
16 compliance with this order.

17 IT IS SO ORDERED.

18 **Dated: July 23, 2007**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE