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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PABLO V. RAMIREZ,

1:07-cv-01224 LJO DLB (HC)

Petitioner,

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND GRANTING LEAVE TO AMEND

v.

[Doc. 1]

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 for writ of habeas corpus on July 26, 2007, in the United States District Court for the Northern District of California. By order of August 8, 2007, the action was transferred to this Court, and was filed on August 22, 2007.

A. Failure to Name 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 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,

1 21 F.3d 359, 360 (9th Cir. 1994). However, the chief officer in charge of state penal institutions
2 is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on
3 probation or parole, the proper respondent is his probation or parole officer and the official in
4 charge of the parole or probation agency or state correctional agency. Id.

5 In the instant petition, Petitioner did not name a Respondent. Petitioner's failure to name
6 a proper respondent requires dismissal of his habeas petition for lack of jurisdiction. Stanley, 21
7 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326 (9th Cir. 1970); see, also,
8 Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976). However, in this
9 case, the Court will give petitioner the opportunity to cure his defect by amending the petition to
10 name a proper respondent. See, West v. Louisiana, 478 F.2d 1026, 1029 (5th Cir.1973), *vacated*
11 *in part on other grounds*, 510 F.2d 363 (5th Cir.1975) (en banc) (allowing petitioner to amend
12 petition to name proper respondent); Ashley v. State of Washington, 394 F.2d 125 (9th Cir.
13 1968) (same).

14 B. Failure to State Claim

15 It appears that Petitioner is attempting to challenge a conviction which occurred in the
16 Tulare County Superior Court. However, after reviewing the petition, the Court cannot decipher
17 the nature of Petitioner's claim as it is highly incoherent.

18 The basic scope of habeas corpus is prescribed by statute. Subsection (c) of Section 2241
19 of Title 28 of the United States Code provides that habeas corpus shall not extend to a prisoner
20 unless he is "in custody in violation of the Constitution." 28 U.S.C. § 2254(a) states:

21 The Supreme Court, a Justice thereof, a circuit judge, or a district court
22 shall entertain an application for a writ of habeas corpus in behalf of a person in
23 custody pursuant to a judgment of a State court only on the ground that he is in
24 custody in violation of the Constitution or laws or treaties of the United States.

25 (emphasis added). See also, Rule 1 of the Rules Governing Section 2254 Cases in the United
26 States District Court. The Supreme Court has held that "the essence of habeas corpus is an attack
27 by a person in custody upon the legality of that custody . . ." Preiser v. Rodriguez, 411 U.S. 475,
28 484 (1973).

Furthermore, in order to succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner

1 must demonstrate that the adjudication of his claim in state court

2 resulted in a decision that was contrary to, or involved an unreasonable
3 application of, clearly established Federal law, as determined by the Supreme
4 Court of the United States; or resulted in a decision that was based on an
unreasonable determination of the facts in light of the evidence presented in the
State court proceedings.

5 28 U.S.C. § 2254(d)(1),(2).

6 In addition, Petitioner must state his claim with sufficient specificity. See Hendricks v.
7 Vasquez, 908 F.2d 490, 491-92 (9th Cir. 1990); Wacht v. Cardwell, 604 F.2d 1245, 1246-47 (9th
8 Cir. 1979). Rule 2(c) of the Rules 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 the petitioner under 28 U.S.C. § 2242.

15 Because the Court has thoroughly reviewed the instant petition and cannot decipher the
16 nature of Petitioner's claim, the instant petition must be dismissed. However, the Court will
17 grant Petitioner the opportunity file an amended petition which clearly and distinctly sets forth
his claims for relief.

18 C. Exhaustion

19 Because the Court cannot determine the nature of Petitioner's claims, the Court cannot
20 determine whether Petitioner has exhausted the state court remedies. Therefore, Petitioner must
21 amend the petition on this ground as well.

22 A petitioner who is in state custody and wishes to collaterally challenge his conviction by
23 a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).
24 The exhaustion doctrine is based on comity to the state court and gives the state court the initial
25 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501
26 U.S. 722, 731, 111 S.Ct. 2546, 2554-55 (1991); Rose v. Lundy, 455 U.S. 509, 518, 102 S.Ct.
27 1198, 1203 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir. 1988).

28 A petitioner can satisfy the exhaustion requirement by providing the highest state court

1 with a full and fair opportunity to consider each claim before presenting it to the federal court.
2 Picard v. Connor, 404 U.S. 270, 276, 92 S.Ct. 509, 512 (1971); Johnson v. Zenon, 88 F.3d 828,
3 829 (9th Cir. 1996). A federal court will find that the highest state court was given a full and fair
4 opportunity to hear a claim if the petitioner has presented the highest state court with the claim's
5 factual and legal basis. Duncan v. Henry, 513 U.S. 364, 365, 115 S.Ct. 887, 888 (1995) (legal
6 basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).
7 Additionally, the petitioner must have specifically told the state court that he was raising a
8 federal constitutional claim. Duncan, 513 U.S. at 365-66, 115 S.Ct. at 888; Keating v. Hood, 133
9 F.3d 1240, 1241 (9th Cir.1998). For example, if a petitioner wishes to claim that the trial court
10 violated his due process rights "he must say so, not only in federal court but in state court."
11 Duncan, 513 U.S. at 366, 115 S.Ct. at 888.

12 Because it is unclear what, if any, claims presented in the instant federal petition for writ
13 of habeas corpus were exhausted in the state's highest court, Petitioner will be ordered to show
14 cause regarding exhaustion. If possible, Petitioner should present to the Court documentary
15 evidence that the claims were indeed presented to the California Supreme Court.¹

16 Based on the foregoing, it is HEREBY ORDERED that:

- 17 1. The petition for writ of habeas corpus is DISMISSED;
- 18 2. Petitioner is granted thirty (30) days from the date of service of this order to file
19 an amended petition in compliance with this order. The petition should bear the
20 above captioned case number and be entitled "Amended Petition";
- 21 3. The Clerk of Court is DIRECTED to send Petitioner a blank § 2254 petition; and
- 22 4. Failure to comply with this order will result in a recommendation that the instant
23 action be dismissed for failure to comply with a court order. Local Rule 11-110.

24 IT IS SO ORDERED.

25 **Dated: August 31, 2007**

25 **/s/ Dennis L. Beck**
26 **UNITED STATES MAGISTRATE JUDGE**

27 ¹A copy of the California Supreme Court's denial alone is insufficient to demonstrate exhaustion. The
28 proper documentation to provide would be a copy of the Petition *filed* in the California Supreme Court that includes
the claim now presented and a file stamp showing that it was indeed filed in that Court.