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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAMUEL LOFTY CONFECTIONER,)	1:09-cv-01976-SKO-HC
)	
Petitioner,)	ORDER GRANTING PETITIONER LEAVE
)	TO FILE A MOTION TO AMEND THE
v.)	PETITION AND NAME A PROPER
)	RESPONDENT NO LATER THAN THIRTY
)	(30) DAYS AFTER THE DATE OF
CALIFORNIA DEPARTMENT OF)	SERVICE OF THIS ORDER
CORRECTIONS AND)	
REHABILITATION,)	
)	
Respondent.)	
)	
)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on November 6, 2009, and January 14, 2010. (Docs. 3, 7).

Pending before the Court is Petitioner's petition, which was filed in this Court on November 5, 2009.

1 I. Screening the Petition

2 Rule 4 of the Rules Governing § 2254 Cases in the United
3 States District Courts (Habeas Rules) requires the Court to make
4 a preliminary review of each petition for writ of habeas corpus.
5 The Court must summarily dismiss a petition "[i]f it plainly
6 appears from the petition and any attached exhibits that the
7 petitioner is not entitled to relief in the district court...."
8 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
9 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.
10 1990).

11 The Court may dismiss a petition for writ of habeas corpus
12 either on its own motion under Rule 4, pursuant to the
13 respondent's motion to dismiss, or after an answer to the
14 petition has been filed. Advisory Committee Notes to Habeas Rule
15 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
16 (9th Cir. 2001). A petition for habeas corpus should not be
17 dismissed without leave to amend unless it appears that no
18 tenable claim for relief can be pleaded were such leave granted.
19 Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

20 II. Petitioner's Failure to Name a Proper Respondent

21 In this case, Petitioner, a parolee challenging his criminal
22 convictions, named as Respondent the "California Department of
23 Corrections and Rehabilitation." (Pet. 1.)

24 A petitioner seeking habeas corpus relief under 28 U.S.C.
25 § 2254 must name the state officer having custody of him as the
26 respondent to the petition. Habeas Rule 2(a); Ortiz-Sandoval v.
27 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California
28 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the

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

13 Here, Petitioner did not name his parole officer or the
14 proper official. Petitioner's failure to name a proper
15 respondent requires dismissal of his habeas petition for lack of
16 jurisdiction. Stanley, 21 F.3d at 360.

17 However, the Court will give Petitioner the opportunity to
18 cure this defect by amending the petition to name a proper
19 respondent. See, In re Morris, 363 F.3d 891, 893-94 (9th Cir.
20 2004). In the interest of judicial economy, Petitioner need not
21 file an amended petition. Instead, Petitioner may file a motion
22 entitled "Motion to Amend the Petition to Name a Proper
23 Respondent" wherein Petitioner may name the proper respondent in
24 this action.

25 III. Order Granting Leave to File a Motion to Amend
26 the Petition

27 Accordingly, Petitioner is GRANTED thirty (30) days from the
28 date of service of this order in which to file a motion to amend

1 the instant petition and name a proper respondent. Failure to
2 amend the petition and state a proper respondent will result in a
3 recommendation that the petition be dismissed for lack of
4 jurisdiction.

5

6 IT IS SO ORDERED.

7 **Dated: July 12, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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