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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SMITH SAESEE,)	1:10-cv-0814-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
PEOPLE OF THE STATE OF)	SERVICE OF THIS ORDER
CALIFORNIA, et al.,)	
)	
Respondents.)	
)	
)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 72-302 and 72-303. Pending before the Court is the petition, which was filed in this Court on May 11, 2010. The petition concerns alleged errors in the trial proceedings that resulted in the conviction and sentence that Petitioner is presently serving.

I. Screening the Petition

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (Habeas Rules) requires the Court to make

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

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

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

18 In this case, Petitioner named the People of the State of
19 California and the Attorney General as Respondent. Petitioner is
20 incarcerated at the California State Prison located in
21 Sacramento, California. The warden at that facility is Tim
22 Virga.

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

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

12 Petitioner's failure to name a proper respondent requires
13 dismissal of his habeas petition for lack of jurisdiction.
14 Stanley, 21 F.3d at 360.

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

23 III. Order Granting Leave to File a Motion to Amend
24 the Petition

25 Accordingly, Petitioner is GRANTED thirty (30) days from the
26 date of service of this order in which to file a motion to amend
27 the instant petition and name a proper respondent. Failure to
28 amend the petition and state a proper respondent will result in a

1 recommendation that the petition be dismissed for lack of
2 jurisdiction.

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4 IT IS SO ORDERED.

5 **Dated: May 24, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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