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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONCIO PALMA,)	1:10-cv-02120-OWW-SKO-HC
)	
Petitioner,)	ORDER DISMISSING THE PETITION
)	WITH LEAVE TO FILE A FIRST
)	AMENDED PETITION (DOC. 1)
v.)	
)	DEADLINE: THIRTY (30) DAYS
KATTY ALLISON,)	AFTER SERVICE OF THIS ORDER
)	
Respondent.)	ORDER DIRECTING THE CLERK TO SEND
)	PETITIONER A BLANK PETITION FOR
)	WRIT OF HABEAS CORPUS

Petitioner is a state prisoner proceeding in forma pauperis and 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 302 and 304. Pending before the Court is the petition, which was filed on November 15, 2010.

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 a preliminary review of each petition for writ of habeas corpus.

1 The Court must summarily dismiss a petition "[i]f it plainly
2 appears from the petition and any attached exhibits that the
3 petitioner is not entitled to relief in the district court...."
4 Habeas Rule 4; O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir.
5 1990); see also Hendricks v. Vasquez, 908 F.2d 490 (9th Cir.
6 1990). Habeas Rule 2(c) requires that a petition 1) specify all
7 grounds of relief available to the Petitioner; 2) state the facts
8 supporting each ground; and 3) state the relief requested.
9 Notice pleading is not sufficient; rather, the petition must
10 state facts that point to a real possibility of constitutional
11 error. Rule 4, Advisory Committee Notes, 1976 Adoption;
12 O'Bremski v. Maass, 915 F.2d at 420 (quoting Blackledge v.
13 Allison, 431 U.S. 63, 75 n. 7 (1977)). Allegations in a petition
14 that are vague, conclusory, or palpably incredible are subject to
15 summary dismissal. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th
16 Cir. 1990).

17 Further, the Court may dismiss a petition for writ of habeas
18 corpus either on its own motion under Habeas Rule 4, pursuant to
19 the respondent's motion to dismiss, or after an answer to the
20 petition has been filed. Advisory Committee Notes to Habeas Rule
21 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
22 (9th Cir. 2001).

23 A. Lack of Specificity

24 Petitioner is an inmate of the California Substance Abuse
25 Treatment Facility (CSATF) at Corcoran, California, who is
26 serving a sentence of life with the possibility of parole imposed
27 in 1990 for a conviction of attempted murder in the San Diego
28 Superior Court. (Pet. 1.) Petitioner challenges a decision of

1 the "board" to deny his parole. (Pet. 4.) Petitioner claims
2 that the evidence was insufficient to support the decision that
3 he continues to pose an unreasonable threat, there was no
4 individualized consideration of the appropriate factors, and the
5 board failed to articulate a rational nexus between the factors
6 and the conclusion that Petitioner is presently dangerous to
7 society if released. Petitioner alleges that this violated the
8 state and federal constitutions, and his continued incarceration
9 is a violation of "due process." (Pet. 4, 5.)

10 Although Petitioner states that he has been denied parole on
11 seven different occasions (pet. 4), he does not state the date or
12 other identifying data in order to permit a respondent to
13 understand precisely which decision is being challenged. Thus,
14 Petitioner has not fully stated his claim, and it is not possible
15 for a respondent to be able to respond intelligently to the
16 petition.

17 Further, Petitioner does not identify the specific guarantee
18 of the federal constitution that was violated or otherwise
19 explain how the decision was in violation of federal law.

20 Because Petitioner fails to identify the decision being
21 challenged and the precise federal constitutional provision or
22 provisions violated, the petition is uncertain and must be
23 dismissed.

24 B. Exhaustion of State Remedies

25 A petitioner who is in state custody and wishes to challenge
26 collaterally a conviction by a petition for writ of habeas corpus
27 must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).
28 The exhaustion doctrine is based on comity to the state court and

1 gives the state court the initial opportunity to correct the
2 state's alleged constitutional deprivations. Coleman v.
3 Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509,
4 518 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1162-63 (9th Cir.
5 1988).

6 A petitioner can satisfy the exhaustion requirement by
7 providing the highest state court with the necessary jurisdiction
8 a full and fair opportunity to consider each claim before
9 presenting it to the federal court, and demonstrating that no
10 state remedy remains available. Picard v. Connor, 404 U.S. 270,
11 275-76 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir.
12 1996). A federal court will find that the highest state court
13 was given a full and fair opportunity to hear a claim if the
14 petitioner has presented the highest state court with the claim's
15 factual and legal basis. Duncan v. Henry, 513 U.S. 364, 365
16 (1995) (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 9-10
17 (1992), superceded by statute as stated in Williams v. Taylor,
18 529 U.S. 362 (2000) (factual basis).

19 Additionally, the petitioner must have specifically told the
20 state court that he was raising a federal constitutional claim.
21 Duncan, 513 U.S. at 365-66; Lyons v. Crawford, 232 F.3d 666, 669
22 (9th Cir.2000), amended, 247 F.3d 904 (9th Cir. 2001); Hiivala v.
23 Wood, 195 F.3d 1098, 1106 (9th Cir. 1999); Keating v. Hood, 133
24 F.3d 1240, 1241 (9th Cir. 1998). In Duncan, the United States
25 Supreme Court reiterated the rule as follows:

26 In Picard v. Connor, 404 U.S. 270, 275...(1971),
27 we said that exhaustion of state remedies requires that
28 petitioners "fairly presen[t]" federal claims to the
state courts in order to give the State the
"'opportunity to pass upon and correct' alleged

1 violations of the prisoners' federal rights" (some
2 internal quotation marks omitted). If state courts are
3 to be given the opportunity to correct alleged violations
4 of prisoners' federal rights, they must surely be
5 alerted to the fact that the prisoners are asserting
6 claims under the United States Constitution. If a
7 habeas petitioner wishes to claim that an evidentiary
8 ruling at a state court trial denied him the due
9 process of law guaranteed by the Fourteenth Amendment,
10 he must say so, not only in federal court, but in state
11 court.

12 Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule
13 further in Lyons v. Crawford, 232 F.3d 666, 668-69 (9th Cir.
14 2000), as amended by Lyons v. Crawford, 247 F.3d 904, 904-05 (9th
15 Cir. 2001), stating:

16 Our rule is that a state prisoner has not "fairly
17 presented" (and thus exhausted) his federal claims
18 in state court unless he specifically indicated to
19 that court that those claims were based on federal law.
20 See, Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir.
21 2000). Since the Supreme Court's decision in Duncan,
22 this court has held that the petitioner must make the
23 federal basis of the claim explicit either by citing
24 federal law or the decisions of federal courts, even
25 if the federal basis is "self-evident," Gatlin v. Madding,
26 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v.
27 Harless, 459 U.S. 4, 7... (1982), or the underlying
28 claim would be decided under state law on the same
29 considerations that would control resolution of the claim
30 on federal grounds, see, e.g., Hiivala v. Wood, 195
31 F.3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon,
32 88 F.3d 828, 830-31 (9th Cir. 1996); Crotts, 73 F.3d
33 at 865.

34 ...
35 In Johnson, we explained that the petitioner must alert
36 the state court to the fact that the relevant claim is a
37 federal one without regard to how similar the state and
38 federal standards for reviewing the claim may be or how
39 obvious the violation of federal law is.

40 Lyons v. Crawford, 232 F.3d 666, 668-69 (9th Cir. 2000), as
41 amended by Lyons v. Crawford, 247 F.3d 904, 904-05 (9th Cir.
42 2001).

43 In the petition before the Court, Petitioner states that he
44 raised before the state courts the issue of an absence of

1 evidence to support the board's denial (pet. 2); however, he does
2 not state that he raised the other arguments or claims that he
3 alleges in the petition before the Court. Further, he does not
4 state that his claims concerned a denial of due process rights
5 protected by the Fourteenth Amendment as distinct from protection
6 by state law. Finally, he does not state what issues he raised
7 before the California Supreme Court, or whether or not his appeal
8 to the highest state court has been decided.

9 If the grounds are pending before the California Supreme
10 Court, or if the grounds were not presented to the California
11 Supreme Court, they are unexhausted, and the petition must be
12 dismissed to provide Petitioner an opportunity to exhaust the
13 claims. 28 U.S.C. § 2254(b)(1); Rose, 455 U.S. at 521-22.

14 The instant petition must be dismissed for the reasons
15 stated above. Petitioner will be given an opportunity to file a
16 first amended petition to cure the deficiencies. Petitioner is
17 advised that failure to file a petition in compliance with this
18 order (i.e., a completed petition with specific, identifiable,
19 cognizable federal claims clearly stated and with exhaustion of
20 state remedies clearly stated) within the allotted time will
21 result in a recommendation that the petition be dismissed and the
22 action be terminated. Petitioner is advised that the amended
23 petition should be entitled, "First Amended Petition," and it
24 must refer to the case number in this action.

25 II. Disposition

26 Accordingly, it is ORDERED that:

27 1) The petition for writ of habeas corpus is DISMISSED with
28 leave to amend; and

1 2) Petitioner is GRANTED thirty (30) days from the date of
2 service of this order to file an amended petition in compliance
3 with this order; and

4 3) The Clerk of the Court is DIRECTED to send Petitioner a
5 form petition pursuant to 28 U.S.C. § 2254.

6
7 IT IS SO ORDERED.

8 **Dated: January 3, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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