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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CLARENCE LEON DEWS,

1:11-cv-02050-BAM (HC)

Petitioner,

v.

ORDER TO SHOW CAUSE WHY PETITION FOR WRIT OF HABEAS CORPUS SHOULD NOT BE DISMISSED FOR LACK OF JURISDICTION

SUPERIOR COURT OF STATE OF CALIFORNIA,

[Doc. 3]

Respondent.

Petitioner is 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 December 7, 2011, in the United States District Court for the Central District of California. The petition was transferred to this Court on December 8, 2011.

Petitioner filed the instant petition on October 25, 2004, in the United Sates District Court for the Eastern District of California, Sacramento Division. By order of November 1, 2004, the action was transferred to the Fresno Division.

The Court has conducted a preliminary review of the Petition and finds it is without jurisdiction to hear the case as Petitioner has named an improper 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.

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

9 In this case, petitioner names the Superior Court of the State of California as Respondent.
10 Petitioner is currently in the custody of the California Department of Corrections, and the
11 Superior Court of the State of California cannot be considered the person having day-to-day
12 control over Petitioner.

13 Petitioner's failure to name a proper respondent requires dismissal of his habeas petition
14 for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326,
15 1326 (9th Cir. 1970); see, also, Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2d
16 Cir. 1976). However, in this case, the Court will give petitioner the opportunity to cure his defect
17 by amending the petition to name a proper respondent. See, West v. Louisiana, 478 F.2d 1026,
18 1029 (5th Cir.1973), *vacated in part on other grounds*, 510 F.2d 363 (5th Cir.1975) (en banc)
19 (allowing petitioner to amend petition to name proper respondent); Ashley v. State of
20 Washington, 394 F.2d 125 (9th Cir. 1968) (same).

21 Accordingly, the Court HEREBY ORDERS:

- 22 1. Petitioner SHALL SHOW CAUSE why the Petition should not be dismissed by
23 AMENDING the Petition to name a proper respondent within thirty (30) days of
24 the date of service of this order. To comply with this directive petitioner need
25 only submit a pleading titled "Amendment to Petition" in which he amends the
26 petition to name a proper respondent. As noted above, that individual is the
27 person having day to day custody over petitioner - usually the warden of the
28 institution where he is confined. The Amendment should be clearly and boldly

captioned as such and include the case number referenced above, and be an original signed under penalty of perjury.

IT IS SO ORDERED.

Dated: December 21, 2011

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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