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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SHAWN BOYKIN,

 Petitioner,

 v.

WOFFORD,

 Respondent.

Case No. 1:13-cv-01592-BAM-HC

ORDER DISMISSING THE PETITION
WITH LEAVE TO FILE A FIRST AMENDED
PETITION NO LATER THAN THIRTY DAYS
AFTER THE DATE OF SERVICE OF THIS
ORDER (DOC. 1)

DIRECTIONS TO THE CLERK TO SEND
PETITIONER A BLANK PETITION FORM

FILING DEADLINE:
THIRTY (30) DAYS

Petitioner is a state prisoner proceeding pro se and in forma pauperis 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 Petitioner's consent in a writing signed by Petitioner and filed by Petitioner on October 11, 2013. Pending before the Court is the petition, which was filed on October 3, 2013.

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1 I. Screening the Petition

2 Rule 4 of the Rules Governing § 2254 Cases in the United States
3 District Courts (Habeas Rules) requires the Court to make a
4 preliminary review of each petition for writ of habeas corpus. The
5 Court must summarily dismiss a petition "[i]f it plainly appears
6 from the petition and any attached exhibits that the petitioner is
7 not entitled to relief in the district court...." Habeas Rule 4;
8 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
9 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
10 2(c) requires that a petition 1) specify all grounds of relief
11 available to the Petitioner; 2) state the facts supporting each
12 ground; and 3) state the relief requested. Notice pleading is not
13 sufficient; rather, the petition must state facts that point to a
14 real possibility of constitutional error. Rule 4, Advisory
15 Committee Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at 420
16 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)).
17 Allegations in a petition that are vague, conclusory, or palpably
18 incredible are subject to summary dismissal. Hendricks v. Vasquez,
19 908 F.2d at 491.

20 Further, the Court may dismiss a petition for writ of habeas
21 corpus either on its own motion under Habeas Rule 4, pursuant to the
22 respondent's motion to dismiss, or after an answer to the petition
23 has been filed. Advisory Committee Notes to Habeas Rule 8, 1976
24 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir.
25 2001).

26 A petition for habeas corpus should not be dismissed without
27 leave to amend unless it appears that no tenable claim for relief
28

1 can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d
2 13, 14 (9th Cir. 1971).

3 II. Uncertain Claim

4 Here, Petitioner alleges that he is serving a sentence of
5 fifteen years to life imposed by the Los Angeles Superior Court in
6 1986 for second degree murder with a gun enhancement. Petitioner
7 challenges the decision of California's Board of Parole Hearings
8 (BPH) made after a hearing held on or about September 26, 2011,
9 finding that Petitioner was unsuitable for parole. Petitioner
10 alleges that he was only seventeen years old when he committed the
11 commitment offense, and that the BPH failed duly to consider his
12 juvenile conviction as a mitigating factor (pet., doc. 1 at 3, 9),
13 failed to weigh Petitioner's age at the time of the crime (id. at
14 4), failed to consider that Petitioner's age was a regulatory
15 concern under California's statutes and thus failed to give
16 Petitioner's age its due weight (id. at 5-6), failed to recognize
17 that less culpability attaches to a crime committed by a juvenile
18 (id. at 7), and produced an analysis of Petitioner's parole
19 suitability in which Petitioner's status as a minor at the time of
20 the offense did not figure prominently (id. at 8). However,
21 Petitioner does not submit the transcript of the parole suitability
22 decision that would show the nature and extent of the matters
23 considered by the BPH, and he does not state specific facts that
24 would tend to that point to a real possibility of constitutional
25 error with respect to the BPH's suitability determination.

26 The notice pleading standard applicable in ordinary civil
27 proceedings does not apply in habeas corpus cases; rather, Habeas
28 Rules 2(c), 4, and 5(b) require a more detailed statement of all

1 grounds for relief and the facts supporting each ground; the
2 petition is expected to state facts that point to a real possibility
3 of constitutional error and show the relationship of the facts to
4 the claim. Habeas Rule 4, Advisory Committee Notes, 1976 Adoption;
5 Mayle v. Felix, 545 U.S. 644, 655 (2005); O'Bremski v. Maass, 915
6 F.2d 418, 420 (9th Cir. 1990) (quoting Blackledge v. Allison, 431
7 U.S. 63, 75 n.7 (1977)). This is because the purpose of the rules
8 is to assist the district court in determining whether the
9 respondent should be ordered to show cause why the writ should not
10 be granted and to permit the filing of an answer that satisfies the
11 requirement that it address the allegations in the petition. Mayle
12 v. Felix, 545 U.S. at 655. Allegations in a petition that are
13 vague, conclusional, or palpably incredible, and that are
14 unsupported by a statement of specific facts, are insufficient to
15 warrant relief and are subject to summary dismissal. Jones v.
16 Gomez, 66 F.3d 199, 204-05 (9th Cir. 1995); James v. Borg, 24 F.3d
17 20, 26 (9th Cir. 1994).

18 Here, although Petitioner informs the Court that the decision
19 being challenged was made by the BPH with respect to Petitioner's
20 parole suitability, Petitioner has failed to state any specific,
21 supporting facts in his claims; rather, Petitioner sets forth
22 conclusions regarding the adequacy of the BPH's consideration of his
23 minority at the date of the commitment offense. Further, Petitioner
24 has failed to submit any documentation, such as the transcript of
25 the parole suitability hearing and decision, that would indicate the
26 facts upon which the decision is based. Petitioner has not shown
27 the relationship between the facts and any alleged violation of his
28 rights.

1 Because Petitioner has failed to include any statement of
2 supporting facts with respect to his claim or claims, the petition
3 must be dismissed.

4 However, it is possible that Petitioner could state facts
5 supporting his claims. Accordingly, the claims will be dismissed as
6 uncertain, but Petitioner will be given leave to file an amended
7 petition with respect to the claims.

8 III. State Claims

9 Federal habeas relief is available to state prisoners only to
10 correct violations of the United States Constitution, federal laws,
11 or treaties of the United States. 28 U.S.C. § 2254(a). Federal
12 habeas relief is not available to retry a state issue that does not
13 rise to the level of a federal constitutional violation. Wilson v.
14 Corcoran, 562 U.S. — , 131 S.Ct. 13, 16 (2010); Estelle v. McGuire,
15 502 U.S. 62, 67-68 (1991). Alleged errors in the application of
16 state law are not cognizable in federal habeas corpus. Souch v.
17 Schaivo, 289 F.3d 616, 623 (9th Cir. 2002). The Court accepts a
18 state court's interpretation of state law. Langford v. Day, 110
19 F.3d 1380, 1389 (9th Cir. 1996). In a habeas corpus proceeding,
20 this Court is bound by the California Supreme Court's interpretation
21 of California law unless it is determined that the interpretation is
22 untenable or a veiled attempt to avoid review of federal questions.
23 Murtishaw v. Woodford, 255 F.3d 926, 964 (9th Cir. 2001).

24 Here, there is no indication that any state court's
25 interpretation of state law was associated with an attempt to avoid
26 review of federal questions. Thus, this Court is bound by the state
27 court's interpretation and application of state law.

28 Insofar as Petitioner rests his claim or claims solely on state

1 law, Petitioner fails to state facts that would entitle him to
2 relief in a proceeding pursuant to § 2254. Thus, insofar as
3 Petitioner's claim or claims are based on an application or
4 interpretation of California law, Petitioner's claims must be
5 dismissed because they are not cognizable in a proceeding pursuant
6 to 28 U.S.C. § 2254.

7 Further, because Petitioner's state claims are defective not
8 because of any dearth of factual allegations, but rather because of
9 their nature as being based solely on state law, Petitioner could
10 not state tenable state law claims even if leave to amend were
11 granted. Thus, Petitioner's state law claims will be dismissed
12 without leave to amend.

13 IV. Amendment of the Petition

14 The instant petition must be dismissed for the reasons stated
15 above. Petitioner will be given leave to file a first amended
16 petition to cure the deficiencies, and specifically to state and
17 document facts in support of his uncertain claim or claims.
18 Petitioner is advised that failure to file a petition in compliance
19 with this order (i.e., a completed petition with cognizable federal
20 claims clearly stated and with exhaustion of state remedies clearly
21 stated) within the allotted time will result in dismissal of the
22 petition and termination of the action. Petitioner is advised that
23 the amended petition should be entitled, "First Amended Petition,"
24 and it must refer to the case number in this action. Further,
25 Petitioner is informed that Local Rule 220 provides that unless
26 prior approval to the contrary is obtained from the Court, every
27 pleading as to which an amendment or supplement is permitted shall
28 be retyped or rewritten and filed so that it is complete in itself

1 without reference to the prior or superseded pleading.

2 V. Disposition

3 Accordingly, it is ORDERED that:

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

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

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

11
12 IT IS SO ORDERED.

13 Dated: October 17, 2013

/s/ Barbara A. McAuliffe
14 UNITED STATES MAGISTRATE JUDGE