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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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11 NATHANIEL WALLACE,

12 Petitioner,

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14 v.
15

16 BOARD OF PRISON HEARINGS,

17 Respondent.
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Case No. 1:14-cv-00058-SKO-HC

ORDER DISMISSING PETITIONER'S STATE
LAW CLAIMS WITHOUT LEAVE TO AMEND
AND DISMISSING THE REMAINDER OF 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)

ORDER DIRECTING THE CLERK TO SEND
TO PETITIONER WITH THIS ORDER A
FORM PETITION PURSUANT TO 28 U.S.C.
§ 2254

FILING DEADLINE:
THIRTY (30) DAYS

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21 Petitioner is a state prisoner proceeding pro se and in forma
22 pauperis with a petition for writ of habeas corpus pursuant to 28
23 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has
24 consented to the jurisdiction of the United States Magistrate Judge
25 to conduct all further proceedings in the case, including the entry
26 of final judgment, by manifesting Petitioner's consent in a document
27 signed by Petitioner and filed by Petitioner on January 29, 2014.
28 Pending before the Court is the petition, which was filed on

1 December 23, 2013, and transferred to this Court on January 15,
2 2014.

3 I. Screening the Petition

4 Rule 4 of the Rules Governing § 2254 Cases in the United States
5 District Courts (Habeas Rules) requires the Court to make a
6 preliminary review of each petition for writ of habeas corpus. The
7 Court must summarily dismiss a petition "[i]f it plainly appears
8 from the petition and any attached exhibits that the petitioner is
9 not entitled to relief in the district court...." Habeas Rule 4;
10 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
11 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
12 2(c) requires that a petition 1) specify all grounds of relief
13 available to the Petitioner; 2) state the facts supporting each
14 ground; and 3) state the relief requested. Notice pleading is not
15 sufficient; the petition must state facts that point to a real
16 possibility of constitutional error. Rule 4, Advisory Committee
17 Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at 420 (quoting
18 Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)). Allegations in
19 a petition that are vague, conclusory, or palpably incredible are
20 subject to summary dismissal. Hendricks v. Vasquez, 908 F.2d at
21 491.

22 The Court may dismiss a petition for writ of habeas corpus
23 either on its own motion under Habeas Rule 4, pursuant to the
24 respondent's motion to dismiss, or after an answer to the petition
25 has been filed. Advisory Committee Notes to Habeas Rule 8, 1976
26 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir.
27 2001). A petition for writ of habeas corpus should not be dismissed
28 without leave to amend unless it appears that no tenable claim for

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

3 II. Failure to Allege Facts Warranting Habeas Relief

4 Petitioner alleges that he is an inmate of the Kern Valley
5 State Prison, which is located within the territorial boundaries of
6 this district. Although Petitioner's claims are unclear, it appears
7 that Petitioner challenges neither his sentence, nor the calculation
8 of his sentence. However, Petitioner does not identify the state
9 court in which he was convicted or his offense of conviction.

10 Petitioner alleges he had an original commitment of July 27,
11 1990, and received an additional commitment on August 31, 1990.
12 Petitioner does not allege any further facts concerning these
13 commitments. He alleges that on September 25, 1990, Respondent
14 Board of Prison Hearings extended his term secretly and changed it
15 from determinate to indeterminate in violation of Cal. Pen. Code §
16 654; this concerns not conduct by prison authorities, but rather
17 dual use of facts in sentencing. Petitioner states that the
18 additional commitment was thus really a constitutionally defective
19 prior conviction. Petitioner alleges generally, without stating any
20 supporting facts, that he suffered a violation of his rights to due
21 process and equal protection of the laws.

22 Because the petition was filed after April 24, 1996, the
23 effective date of the Antiterrorism and Effective Death Penalty Act
24 of 1996 (AEDPA), the AEDPA applies to the petition. Lindh v.
25 Murphy, 521 U.S. 320, 327 (1997); Jeffries v. Wood, 114 F.3d 1484,
26 1499 (9th Cir. 1997).

27 A district court may entertain a petition for a writ of habeas
28 corpus by a person in custody pursuant to the judgment of a state

1 court only on the ground that the custody is in violation of the
2 Constitution, laws, or treaties of the United States. 28 U.S.C.
3 §§ 2254(a), 2241(c)(3); Williams v. Taylor, 529 U.S. 362, 375 n.7
4 (2000); Wilson v. Corcoran, 562 U.S. -, -, 131 S.Ct. 13, 16 (2010)
5 (per curiam). The notice pleading standard applicable in ordinary
6 civil proceedings does not apply in habeas corpus cases. Habeas
7 Rules 2(c), 4, and 5(b) require a more detailed statement of all
8 grounds for relief and the facts supporting each ground, and the
9 petition is expected to state facts that point to a real possibility
10 of constitutional error and show the relationship of the facts to
11 the claim. Habeas Rule 4, Advisory Committee Notes, 1976 Adoption;
12 Mayle v. Felix, 545 U.S. 644, 655 (2005); O'Brenski v. Maass, 915
13 F.2d 418, 420 (9th Cir. 1990) (quoting Blackledge v. Allison, 431
14 U.S. 63, 75 n.7 (1977)). The purpose of the rules is to assist the
15 district court in determining whether the respondent should be
16 ordered to show cause why the writ should not be granted and to
17 permit the filing of an answer that satisfies the requirement that
18 it address the allegations in the petition. Mayle v. Felix, 545
19 U.S. at 655. Allegations in a petition that are vague,
20 conclusional, or palpably incredible, and that are unsupported by a
21 statement of specific facts, are insufficient to warrant relief and
22 are subject to summary dismissal. Jones v. Gomez, 66 F.3d 199, 204-
23 05 (9th Cir. 1995); James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994).

24 Here, Petitioner concludes that he suffered equal protection
25 and due process allegations, but he fails to allege any specific
26 facts in support of his claims. Petitioner also fails to allege
27 facts that would enable this Court to determine the appropriate
28 venue of this action. Pursuant to 28 U.S.C. § 2241(d), a state

1 prisoner seeking relief pursuant to § 2254 may proceed in either the
2 district of conviction or the district of confinement. However,
3 petitions challenging a conviction preferably are heard in the
4 district of conviction, Laue v. Nelson, 279 F.Supp. 265, 266
5 (N.D.Cal. 1968); petitions challenging execution of sentence are
6 preferably heard in the district where the inmate is confined, Dunne
7 v. Henman, 875 F.2d 244, 249 (9th Cir. 1989). Traditional
8 considerations of venue, such as the convenience of parties and
9 witnesses and the interests of justice are also considered. Braden
10 v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 495
11 (1973).

12 Here, the uncertainty of Petitioner's claims and his failure to
13 identify the court in which he suffered conviction of the commitment
14 offenses has prevented the Court from determining the correct venue
15 for this action. Petitioner will be given an opportunity to inform
16 the Court fully of his claims and to identify the court of
17 conviction in an amended petition.

18 Because Petitioner has failed to include any statement of
19 supporting facts with respect to his claim or claims, the claims
20 must be dismissed. However, it is possible that Petitioner could
21 state facts supporting his claims. Accordingly, with the exception
22 of the state claims discussed below, Petitioner's claims will be
23 dismissed as uncertain, but Petitioner will be given leave to file
24 an amended petition with respect to the claims.

25 III. State Claims

26 Federal habeas relief is available to state prisoners only to
27 correct violations of the United States Constitution, federal laws,
28 or treaties of the United States. 28 U.S.C. § 2254(a). Federal

1 habeas relief is not available to retry a state issue that does not
2 rise to the level of a federal constitutional violation. Wilson v.
3 Corcoran, 562 U.S. — , 131 S.Ct. 13, 16 (2010); Estelle v. McGuire,
4 502 U.S. 62, 67-68 (1991). Alleged errors in the application of
5 state law are not cognizable in federal habeas corpus. Souch v.
6 Schaivo, 289 F.3d 616, 623 (9th Cir. 2002). The Court accepts a
7 state court's interpretation of state law. Langford v. Day, 110
8 F.3d at 1389. In a habeas corpus proceeding, this Court is bound by
9 the California Supreme Court's interpretation of California law
10 unless the interpretation is deemed untenable or a veiled attempt to
11 avoid review of federal questions. Murtishaw v. Woodford, 255 F.3d
12 926, 964 (9th Cir. 2001). Here, there is no indication that any
13 state court's interpretation of state law was associated with an
14 attempt to avoid review of federal questions. Thus, this Court is
15 bound by the state court's interpretation and application of state
16 law, including any interpretation or application of Cal. Pen. Code §
17 654.

18 Insofar as Petitioner rests his claim or claims solely on state
19 law, including Cal. Pen. Code § 654, he fails to state facts that
20 would entitle him to relief in a proceeding pursuant to 28 U.S.C.
21 § 2254. Thus, Petitioner's claim or claims based on an application
22 or interpretation of California law must be dismissed because they
23 are not cognizable in a § 2254 proceeding.

24 Further, because Petitioner's state claims are defective not
25 because of any dearth of factual allegations, but rather because of
26 their nature as being based solely on state law, Petitioner could
27 not state tenable state law claims even if leave to amend were
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1 granted. Thus, Petitioner's state law claims will be dismissed
2 without leave to amend.

3 IV. Naming a Proper Respondent

4 Petitioner named as Respondent the Board of Prison Hearings.
5 (Pet., doc. 1, 1.) Petitioner is incarcerated at the Kern Valley
6 State Prison located at Delano, California. The official website of
7 the California Department of Corrections and Rehabilitation (CDCR)
8 reflects that the warden at that facility is Martin Biter.¹

9 A petitioner who is seeking habeas corpus relief under 28
10 U.S.C. § 2254 must name the state officer having custody of him as
11 the respondent to the petition. Habeas Rule 2(a); Ortiz-Sandoval v.
12 Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California
13 Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). The person having
14 custody of an incarcerated petitioner is generally the warden of the
15 prison where the petitioner is incarcerated because the warden has
16 "day-to-day control over" the petitioner and can produce the
17 petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th
18 Cir. 1992); see also, Stanley v. California Supreme Court, 21 F.3d
19 at 360. However, the chief officer in charge of state penal
20 institutions, such as the Secretary of the CDCR, is also
21 appropriate. Ortiz-Sandoval, 81 F.3d at 894; Stanley, 21 F.3d at
22 360.

23 Petitioner's failure to name a proper respondent may require
24 dismissal of his habeas petition for a failure to name a person who

26 ¹ The Court may take judicial notice of facts that are capable of accurate and
27 ready determination by resort to sources whose accuracy cannot reasonably be
28 questioned, including undisputed information posted on official websites. Fed. R.
Evid. 201(b); United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993);
Daniels-Hall v. National Education Association, 629 F.3d 992, 999 (9th Cir. 2010).
The address of the official website for the CDCR is <http://www.cdcr.ca.gov>.

1 can produce the petitioner in response to an order of the Court and
2 thereby to secure personal jurisdiction. See, Smith v. Idaho, 392
3 F.3d 350, 355 n.3 (9th Cir. 2004). This Court must ask sua sponte
4 whether the respondent who is named has the power to order the
5 petitioner's release. If not, the Court may not grant effective
6 relief, and thus it should not hear the case unless the petition is
7 amended to name a respondent who can grant the desired relief. Id.
8 The Court will give Petitioner the opportunity to cure this defect
9 by amending the petition to name a proper respondent, such as the
10 warden of his facility. See, In re Morris, 363 F.3d 891, 893-94
11 (9th Cir. 2004).

12 V. Amendment of the Petition

13 As discussed above, the petition must be dismissed. Petitioner
14 will be given leave to file a first amended petition to cure the
15 deficiencies, and specifically to state and document facts in
16 support of his uncertain claim or claims. Petitioner is advised
17 that failure to file a petition in compliance with this order (i.e.,
18 a completed petition form with cognizable federal claims clearly
19 stated) within the allotted time will result in dismissal of the
20 petition and termination of the action. Petitioner is advised that
21 the amended petition should be entitled, "First Amended Petition,"
22 and it must refer to the case number in this action. Petitioner is
23 further informed that pursuant to Local Rule 220, unless prior
24 approval to the contrary is obtained from the Court, every pleading
25 as to which an amendment or supplement is permitted shall be retyped
26 or rewritten and filed so that it is complete in itself without
27 reference to the prior or superseded pleading. The Clerk will be
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1 directed to send to Petitioner a blank form petition for a
2 proceeding pursuant to § 2254.

3 VI. Disposition

4 Accordingly, it is ORDERED that:

5 1) Petitioner's state law claim or claims are DISMISSED without
6 leave to amend;

7 2) The remaining petition for writ of habeas corpus is
8 DISMISSED with leave to amend;

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

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

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16 IT IS SO ORDERED.

17 Dated: February 27, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE