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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**GARY FISHER,**  
  
Petitioner,  
  
**v.**  
  
**ARRESTING AGENT, et al.,**  
  
Respondents.

Case No. 1:14-cv-00644 MJS (HC)

**ORDER DISMISSING PETITION FOR WRIT  
OF HABEAS CORPUS FOR FAILING TO  
STATE COGNIZABLE CLAIM**

**AMENDED PETITION DUE WITHIN THIRTY  
(30) DAYS**

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus under the authority of 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on March 11, 2014. (Pet., ECF No. 1.) In the petition Petitioner sets forth that he was convicted in Kern County. However, the Court is unable to discern the bases, if any, for his legal challenges to his conviction. (*Id.*)

**I. DISCUSSION**

**A. Procedural Grounds for Summary Dismissal**

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

1 If it plainly appears from the petition and any attached exhibits that  
2 the petitioner is not entitled to relief in the district court, the judge must  
3 dismiss the petition and direct the clerk to notify the petitioner.

4 The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a  
5 petition for writ of habeas corpus, either on its own motion under Rule 4, pursuant to the  
6 respondent's motion to dismiss, or after an answer to the petition has been filed. A  
7 petition for habeas corpus should not be dismissed without leave to amend unless it  
8 appears that no tenable claim for relief can be pleaded were such leave granted. Jarvis  
9 v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971).

10 **B. Petitioner's Claims**

11 Petitioner presents two claims in his petition. Claim one in its entirety reads:

12 Ask yourself Judge – How much alcohol could I drink in that timeframe?  
13 Did not have even A-5-B alcohol terms on my parole for this chum to ever  
14 stop, and violently be an asshole!

15 (Pet., ECF No. 1.) Petitioner's second claim states:

16 I was smoking a cigarette 20 minute till the bus arrived. Did this guy just  
17 talk to some rouge agents? He had either serious issue with me, or didn't  
18 get layed nite before. Even a good agent, after serving the time I did, want  
19 to drink a cold beer, now come on, what is the agenda concerning me  
20 anyway?

21 (Id.)

22 The Court finds that Petitioner's statements in his Petition are insufficiently  
23 specific to enable Respondent to properly respond to Petitioner's claims. The notice  
24 pleading standard applicable in ordinary civil proceedings does not apply in habeas  
25 corpus cases. Habeas Rules 2(c), 4, and 5(b) require a more detailed statement of all  
26 grounds for relief and the facts supporting each ground; the petition is expected to state  
27 facts that point to a real possibility of constitutional error and show the relationship of the  
28 facts to the claim. Habeas Rule 4, Advisory Committee Notes, 1976 Adoption; Mayle v.  
Felix, 545 U.S. 644, 655 (2005); O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990)  
(quoting Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977)). This is because the purpose

1 of the rules is to assist the district court in determining whether the respondent should  
2 be ordered to show cause why the writ should not be granted and to permit the filing of  
3 an answer that satisfies the requirement that it address the allegations in the petition.  
4 Mayle, 545 U.S. at 655. Allegations in a petition that are vague, conclusional, or palpably  
5 incredible, and that are unsupported by a statement of specific facts, are insufficient to  
6 warrant relief and are subject to summary dismissal. Jones v. Gomez, 66 F.3d 199, 204-  
7 05 (9th Cir. 1995); James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994).

8 Petitioner does not specify the conviction he is challenging or what federal law  
9 was violated by Respondent. Without more, Respondent is not reasonably expected to  
10 respond to Petitioner's claims.

11 A petition for habeas corpus should not be dismissed without leave to amend  
12 unless it appears that no tenable claim for relief can be pleaded were such leave  
13 granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971). Accordingly, the Court shall  
14 provide Petitioner another opportunity to state his claims in a second amended petition.  
15 The Court shall provide Petitioner a blank petition for writ of habeas corpus, and  
16 Petitioner is advised that he must reference the instant case number and designate his  
17 petition as an "Amended Petition." Petitioner must present his claims in sufficient detail  
18 as to provide Respondent the ability to comprehend and respond with reasonable effort.

19 **II. ORDER**

20 Accordingly, it is HEREBY ORDERED that:

- 21 1. Petitioner is GRANTED thirty (30) days from the date of service of this Order to  
22 SUBMIT an AMENDED PETITION. The amended petition should be clearly and  
23 boldly titled "AMENDED PETITION," contain the appropriate case number, and be  
24 an original signed under penalty of perjury;
- 25 2. The Clerk of Court is DIRECTED to send Petitioner a blank form petition for  
26 Petitioner's filing pursuant to 28 U.S.C. § 2254; and,
- 27 3. Petitioner is forewarned that his failure to comply with this order may result in a  
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Recommendation that the petition be dismissed pursuant to Local Rule 110.

IT IS SO ORDERED.

Dated: May 12, 2014

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE