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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY TILLMAN,
Petitioner,
v.
THE BOARD OF PAROLE HEARINGS,
Respondent.

No. 2:14-cv-0615 GGH P
ORDER¹

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner challenges various decisions by the California Board of Parole Hearings (BPH) finding him unsuitable for parole in regard to his underlying 1985 conviction, as well as other claims. Before the court is petitioner’s second amended petition, filed June 2, 2014. By orders of April 4 and May 27, 2014, petitioner was informed of the deficiencies in his petition, and directed to file an amended petitions. The second amended petition, filed June 2, 2014, does nothing more than repeat excerpts from the latest order verbatim as grounds for relief, and is therefore frivolous.

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¹ Petitioner consented to the undersigned as presiding judge pursuant to 28 U.S.C. § 636 (c). Respondent has not, and will not be served herein. Therefore, this case will be finally decided by the undersigned.

1 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a
2 petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not
3 entitled to relief in the district court“ Rule 4, Rules Governing Section 2254 Cases; see also
4 White v. Lewis, 874 F.2d 599, 602–03 (9th Cir.1989) (meritorious motions to dismiss permitted
5 under Rule 4); Gutierrez v. Griggs, 695 F.2d 1195, 1198 (9th Cir. 1983) (Rule 4 “explicitly
6 allows a district court to dismiss summarily the petition on the merits when no claim for relief is
7 stated”). However, a petition for writ of habeas corpus should not be dismissed without leave to
8 amend unless it appears that no tenable claim for relief can be pleaded were such leave granted.
9 Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971). “Summary dismissal is appropriate only where
10 the allegations are vague [or] conclusory or palpably incredible, ... or patently frivolous or false.”
11 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (internal quotations and citations
12 omitted).

13 The four grounds for relief set forth in the second amended petition merely repeat
14 instructions taken directly from the court’s previous order. For example, as Ground One, the
15 petition states: “The petitioner is confusing in stating that he is twelve years past his parole
16 hearing in 2002, 2004, 2006, 2008, and 2010, but elsewhere stating that he did not get a fair
17 hearing.” (ECF No. 8 at 4) (quoting Order, filed May 27, 2014, at 4:16-18). As Ground Two, the
18 petition states: “Petitioner states that the attorney misled him into believing he was an A.D.H.
19 attorney and familiar with petitioner’s condition, but later rev[e]aled he was not.” (Id. at 4)
20 (quoting Order at p. 1:25-27). Petitioner also repeats quotations from the order as his enumerated
21 Grounds Three and Four.

22 After being given three opportunities to file a petition, and despite receiving specific and
23 detailed instructions in two orders, it is clear that petitioner has been unable to cure the defects in
24 his allegations, and providing him with further opportunities would not be productive. This
25 appears to be one of those relatively rare cases when to grant petitioner further leave to amend
26 would be patently futile. Therefore, the petition is dismissed for the reasons stated here and for
27 the reasons explained in the court’s two previous orders.

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Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, this court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability may issue only “if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). For the reasons set forth herein, a substantial showing of the denial of a constitutional right has not been made in this case.

Accordingly, IT IS HEREBY ORDERED that:

- 1. Petitioner’s application for a writ of habeas corpus is dismissed; and
- 2. A certificate of appealability should not issue in this action.

Dated: August 6, 2014

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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