

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID T. AN, Petitioner, v. D. BAUGHMAN, Respondent.	
--	--

No. 2:16-cv-2657 KJM DB

ORDER

 Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Before the court is petitioner's petition for screening and letter concerning his payment of the filing fee. (ECF Nos. 1; 9.) Petitioner paid the filing fee. (See ECF No. 9.) For the reasons set forth below, this court will dismiss the petition, provide petitioner an opportunity to amend the petition, and direct the Clerk of Court to change the docket text of ECF No. 1 to reflect that petitioner paid the filing fee in this case.

BACKGROUND

 Petitioner initiated this action in October of 2016 by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Therein, petitioner challenges his 2009 conviction and sentence rendered by the Sacramento County Superior Court.

////
////

SCREENING

I. Legal Standards

The court is required to screen all actions brought by prisoners who seek any form of relief, including habeas relief, from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a habeas petition or portion thereof if the prisoner raises claims that are legally “frivolous or malicious” or fail to state a basis on which habeas relief may be granted. 28 U.S.C. § 1915A(b)(1),(2). This means the court must dismiss a habeas petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief[.]” Rule 4 Governing Section 2254 Cases.

Rule 11 of the Rules Governing Section 2254 Cases provides that “[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.” Drawing on the Federal Rules of Civil Procedure, when considering whether a petition presents a claim upon which habeas relief can be granted, the court must accept the allegations of the petition as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and construe the petition in the light most favorable to the petitioner, see Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Pro se pleadings are held to a less stringent standard than those drafted by lawyers, Haines v. Kerner, 404 U.S. 519, 520 (1972), but “[i]t is well-settled that ‘[c]onclusory allegations which are not supported by a statement of specific facts do not warrant habeas relief.’” Jones v. Gomez, 66 F.3d 199, 204 (9th Cir. 1995) (quoting James v. Borg, 24 F.3d 20, 26 (9th Cir. 1994)). See also Corjasso v. Ayers, 278 F.3d 874, 878 (9th Cir. 2002) (“Pro se habeas petitioners may not be held to the same technical standards as litigants represented by counsel.”); Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010) (“[T]he petitioner is not entitled to the benefit of every conceivable doubt; the court is obligated to draw only reasonable factual inferences in the petitioner's favor.”)

Rule 2(c) of the Rules Governing § 2254 Cases requires every habeas petition to (1) specify all the grounds for relief available to the petitioner; (2) state the facts supporting each ground; and (3) state the relief requested. Although, as stated above, pro se petitions receive less scrutiny for precision than those drafted by lawyers, a petitioner must give fair notice of his

1 claims by stating the factual and legal elements of each claim in a short, plain, and succinct
2 manner. See Mayle v. Felix, 545 U.S. 644, 648 (2005) (“In ordinary civil proceedings ... Rule 8
3 of the Federal Rules of Civil Procedure requires only 'a short and plain statement[.] ... Rule 2(c)
4 of the Rules Governing Habeas Corpus Cases requires a more detailed statement.”) Allegations
5 in a petition that are vague, conclusory, or palpably incredible, and that are unsupported by a
6 statement of specific facts, are insufficient to warrant relief and are subject to summary dismissal.
7 Jones v. Gomez, 66 F.3d 199, 204–05 (9th Cir.1995); James v. Borg, 24 F.3d 20, 26 (9th
8 Cir.1994).

9 **II. Discussion**

10 Petitioner claims two grounds for habeas relief in his petition: (1) That the trial court
11 wrongfully denied his request for resentencing based upon the legislative intent of California
12 Proposition 47; and (2) That the sentence enhancements applied by the trial court were unlawful.
13 (ECF No. 1.)

14 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) imposes “a highly
15 deferential standard for evaluating state-court rulings,” requiring “that state-court decisions be
16 given the benefit of the doubt.” Woodford v. Visciotti, 537 U.S. 19, 24 (2002) (quoting Lindh v.
17 Murphy, 521 U.S. 320, 333 n. 7 (1997)). Section 2241(c) provides that habeas corpus shall not
18 extend to a prisoner unless he is “in custody in violation of the Constitution.” 28 U.S.C. §
19 2254(a) states, “[A] district court shall entertain an application for a writ of habeas corpus in
20 behalf of a person in custody pursuant to a judgment of a State court only on the ground that he is
21 in custody in violation of the Constitution or laws or treaties of the United States.” See also Rule
22 1 to the Rules Governing Section 2254 Cases in the United States District Court. “[F]ederal
23 habeas corpus relief does not lie for errors of state law.” Estelle v. McGuire, 502 U.S. 62, 67
24 (1991) (citations omitted). “[E]rrors of state law do not concern us unless they rise to the level of
25 a constitutional violation.” Oxborrow v. Eikenberry, 877 F.2d 1395, 1400 (9th Cir. 1989).

26 The Supreme Court has held that “the essence of habeas corpus is an attack by a person in
27 custody upon the legality of that custody.” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). To
28 succeed in a petition pursuant to Section 2254, a petitioner must demonstrate that the adjudication

1 of his claim in state court “resulted in a decision that was contrary to, or involved an unreasonable
2 application of, clearly established Federal law, as determined by the Supreme Court of the United
3 States; or resulted in a decision that was based on an unreasonable determination of the facts in
4 light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(1), (2).
5 Petitioner may only seek habeas relief if the nature or duration of his imprisonment violates
6 federal constitutional provisions.

7 **A. Ground One**

8 As stated above, ground one of the petition asserts that the sentencing court erred in
9 denying petitioner’s motion for resentencing based upon the legislative intent of California
10 Proposition 47. (ECF No. 1 at 11-12.) A federal court can grant habeas relief only if the
11 petitioner has demonstrated that the state court violated the United States constitution or federal
12 law. Swarthout v. Cooke, 562 U.S. 216, 219 (2011). “[F]ederal habeas corpus relief does not lie
13 for errors of state law.” McGuire, 502 U.S. at 67 (quoting Lewis v. Jeffers, 497 U.S. 764, 780
14 (1990)).

15 Because this ground only alleges a violation of California state sentencing law, this claim
16 is not recognized in a federal habeas proceeding. Accordingly, this claim is dismissed. However,
17 petitioner may file an amended petition that attempts to challenge a decision that is “contrary to,
18 or involved an unreasonable application of, clearly established **Federal** law[.]” 28 U.S.C. §
19 2254(d)(1) (emphasis supplied).

20 **B. Ground Two**

21 As with the first ground, petitioner’s second claim for relief challenges the application of
22 California sentencing law. Specifically, petitioner alleges that the trial court was precluded from
23 imposing enhancements when the crime qualifies as a serious felony solely because it involves
24 firearm use. (ECF No. 1 at 13-14.) Petitioner claims that both enhancements applied in his case
25 were based solely on his use of a firearm in commission of a single offense, which requires that
26 only the greater of the two enhancements may be imposed. (Id.)

27 While petitioner claims that the application of these enhancements was “unconstitutional,”
28 he only states this in a vague, conclusory manner, without identifying the specific United States

1 constitutional grounds on which the claim is based. Furthermore, petitioner cites only to the
2 California penal code and a state appellate court ruling as the legal basis of the claim. As stated,
3 this challenge to petitioner's sentence sounds solely in state sentencing law and does not attempt
4 to demonstrate that the state court violated the United States constitution or federal law. As
5 explained above, a state court's violation of the state penal code does not constitute a cognizable
6 claim in federal habeas review. See Swarthout, 562 U.S. at 219; McGuire, 502 U.S. at 67.
7 Accordingly, ground two would not state a claim cognizable in federal habeas proceedings.

8 For these reasons, this claim is dismissed. However, petitioner may file an amended
9 petition that attempts to challenge a decision that is "contrary to, or involved an unreasonable
10 application of, clearly established **Federal** law[.]" 28 U.S.C. § 2254(d)(1) (emphasis supplied).

11 **FILING FEE**

12 The docket text for ECF No. 1 in this case states that petitioner did not pay the \$5.00
13 filing fee. (ECF No. 1.) Accordingly, the court ordered petitioner to submit a motion to proceed
14 in forma pauperis or pay the filing fee. (ECF No. 6.) Petitioner responded to this order by
15 submitting a letter and exhibit demonstrating that he paid the \$5.00 filing fee to the Northern
16 District of California on October 23, 2016 through his prison trust account. (ECF No. 9.) This
17 case was initially filed in the Northern District of California before being transferred to this
18 district. (ECF No. 3.) The Clerk of Court has confirmed to the undersigned that petitioner did
19 pay the appropriate fee to the Northern District of California. Accordingly, the Clerk of Court is
20 directed to change the docket text of ECF No. 1 to reflect that the filing fee was paid.

21 **CONCLUSION**

22 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

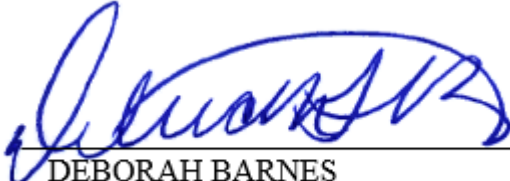
- 23 1. Petitioner's petition (ECF No. 1) is dismissed with leave to amend.
- 24 2. Within thirty days of the date of this order, petitioner shall file an amended petition.

25 The amended petition shall include the case number assigned to this action and shall
26 be titled "First Amended Petition." Petitioner is warned that the court cannot refer to
27 his prior petition to make his First Amended Petition complete. Petitioner must
28 include all claims for habeas corpus relief in his first amended petition.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. The Clerk of the Court is directed to send petitioner a copy of the form used in this district for pursuing a writ of habeas corpus under 28 U.S.C. § 2254.
- 4. Petitioner is warned that his failure to comply with this order may result in dismissal of this action.
- 5. The Clerk of Court is directed to change the docket text of ECF No. 1 to reflect that the filing fee was paid.

Dated: June 27, 2017



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

TIM-DLB:10
DB / ORDERS / ORDERS.PRISONER.HABEAS / an.2657.scm