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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 EUREKA DIVISION

7
8 FERNANDO LOPEZ,
9 Petitioner,

10 v.

11 WARDEN RON DAVIS,
12 Respondent.

Case No. 16-cv-7390-NJV (PR)

**ORDER FOR RESPONDENT TO SHOW
CAUSE**

Dkt. No. 2

United States District Court
Northern District of California

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14 Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant
15 to 28 U.S.C. § 2254. Petitioner was found guilty of a prison rule violation while incarcerated at
16 San Quentin State Prison, so venue is proper here. *See* 28 U.S.C. § 2241(d). Petitioner has also
17 applied for leave to proceed in forma pauperis and consented to the jurisdiction of a Magistrate
18 Judge. Petition at 7.

19 **BACKGROUND**

20 Petitioner was found in possession of a cell phone and assessed a 90 day loss off credits.
21 Petition at 5, 34. His petition to the California Supreme Court was denied. *Id.* at 9.

22 **DISCUSSION**

23 **Standard of Review**

24 This court may entertain a petition for writ of habeas corpus “in behalf of a person in
25 custody pursuant to the judgment of a State court only on the ground that he is in custody in
26 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v.*
27 *Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading
28 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of

1 habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court
2 must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting
3 each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’
4 pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility
5 of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
6 688, 689 (1st Cir. 1970)).

7 **Legal Claims**

8 As grounds for federal habeas relief, petitioner asserts that there was insufficient evidence
9 to find him guilty of the charged offense and the legal standard for guilt was not correctly noticed
10 in the charges. Liberally construed, this claim is sufficient to require a response.

11 **CONCLUSION**

- 12 1. Petitioner’s motion to proceed in forma pauperis (Docket No. 2) is **GRANTED**.
- 13 2. The clerk shall serve by regular mail a copy of this order, the petition and all
14 attachments thereto and a Magistrate Judge jurisdiction consent form on respondent and
15 respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a
16 copy of this order on petitioner.
- 17 3. Respondent shall file with the court and serve on petitioner, within fifty-six (56) days of
18 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
19 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
20 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
21 trial record that have been transcribed previously and that are relevant to a determination of the
22 issues presented by the petition.
- 23 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
24 court and serving it on respondent within twenty-eight (28) days of his receipt of the answer.
- 25 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as
26 set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
27 If respondent files such a motion, it is due fifty-six (56) days from the date this order is entered. If
28 a motion is filed, petitioner shall file with the court and serve on respondent an opposition or

1 statement of non-opposition within twenty-eight (28) days of receipt of the motion, and
2 respondent shall file with the court and serve on petitioner a reply within fourteen (14) days of
3 receipt of any opposition.

4 5. Petitioner is reminded that all communications with the court must be served on
5 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep
6 the court informed of any change of address and must comply with the court's orders in a timely
7 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
8 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
9 1997) (Rule 41(b) applicable in habeas cases).

10 **IT IS SO ORDERED.**

11 Dated: January 25, 2017


NANDOR J. VADAS
United States Magistrate Judge

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