

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
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

JOHN RAY DYNES,
Petitioner,
v.
CDCR,
Respondent.

Case No. 17-cv-1706-NJV (PR)
ORDER FOR PETITIONER TO SHOW CAUSE
Docket Nos. 2, 5

Petitioner, a California prisoner filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a 1994 conviction in Alameda County, so venue is proper here. See 28 U.S.C. § 2241(d). Petitioner has submitted an application to proceed in forma pauperis and has consented to the jurisdiction of a Magistrate Judge.

Petitioner seeks to be resentenced pursuant to Proposition 57. Petitioner states he filed a habeas petition in the Alameda County Superior Court; however, it does not appear that his claim was presented to the California Supreme Court. Prisoners in state custody who wish to challenge collaterally in federal habeas proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b), (c); *Rose v. Lundy*, 455 U.S. 509, 515-16 (1982).

CONCLUSION

1. Petitioner’s motion to proceed in forma pauperis (Docket Nos. 2, 5) is **GRANTED**.
2. Petitioner must show cause within **twenty-one (21) days**, why this case should not be

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

dismissed as unexhausted. Failure to file a response will result in this case being dismissed.

3. Petitioner must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

Dated: May 19, 2017



NANDOR J. VADAS
United States Magistrate Judge