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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 CHARLES FORDJOUR,) No. C 07-3044 MMC (PR)
9)
10 Petitioner,) **ORDER OF DISMISSAL; GRANTING**
11 v.) **LEAVE TO PROCEED IN FORMA**
12 ROBERT L. AYERS, et al.,) **PAUPERIS**
13 Respondents.) **(Docket No. 2)**
14 _____)

15 On June 12, 2007, petitioner, a California prisoner proceeding pro se, filed the above-
16 titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging both his
17 2004 state court conviction and his 2007 revocation of parole. He has applied for leave to
18 proceed in forma pauperis.

19 In March 2004, in San Mateo County Superior Court, petitioner was convicted of
20 fraud under California Penal Code § 532(a), and sentenced to a term of three years in state
21 prison. Following his release on parole, he was found by the California Board of Prison
22 Hearings (“BPH”), on February 21, 2007, to be in violation thereof and was returned to
23 prison for a term of one year and placed on parole for one additional year. Petitioner states
24 he appealed his 2004 conviction and sentence to the California Court of Appeal, which
25 reversed in part and affirmed in part, and that a subsequent petition for direct review to the
26 California Supreme Court was denied. (See Pet. at 3; see also at 4-5.) He further states that
27 he filed an “appeal/post-conviction relief” in the Santa Clara County Superior Court in 2004,
28 which was denied. (See id. at 4.) Finally, he states that at the time he filed the instant federal

1 habeas petition, he had a petition, appeal, or other post-conviction proceeding pending in
2 both the Court of Appeal and the Santa Clara County Superior Court. (See id. at 5.)

3 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person
4 in custody pursuant to the judgment of a State court only on the ground that he is in custody
5 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
6 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an
7 order directing the respondent to show cause why the writ should not be granted, unless it
8 appears from the application that the applicant or person detained is not entitled thereto.”
9 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
10 petition are vague, conclusory, palpably incredible, or patently frivolous or false. See
11 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (citing Blackledge v. Allison, 431
12 U.S. 63, 75-76 (1977)).

13 The exhaustion requirement applicable to federal habeas petitions is not satisfied if
14 there is a pending post-conviction proceeding in state court. See 28 U.S.C. § 2254(b)-(c);
15 Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-conviction challenge to a
16 criminal conviction is pending in state court, a potential federal habeas petitioner must await
17 the outcome of that challenge before his state remedies are considered exhausted. See id.
18 This rule applies irrespective of whether the issue raised in the pending state petition is
19 included in the federal petition, for the reason that a pending state court challenge may result
20 in a reversal of the petitioner's conviction, thereby mootng the federal petition. See id.
21 (citations omitted).

22 As petitioner has a petition, appeal or other post-conviction proceeding pending in the
23 California Court of Appeal and Santa Clara County Superior Court, the instant petition for a
24 writ of habeas corpus is hereby DISMISSED, without prejudice to petitioner’s refileing his
25 claims after all state court post-conviction challenges to petitioner’s conviction have been
26 completed and all claims petitioner wishes to raise in federal court have been exhausted in
27 accordance with 28 U.S.C. § 2254(b)-(c). See Rose v. Lundy, 455 U.S. 509, 522 (1982)
28 (holding every claim raised in federal habeas petition must be exhausted).

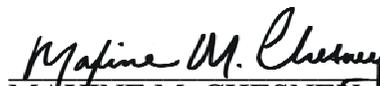
1 In light of petitioner's lack of funds, the application to proceed in forma pauperis is
2 hereby GRANTED.

3 This order terminates Docket No. 2.

4 The Clerk shall close the file.

5 IT IS SO ORDERED.

6 DATED: June 20, 2007

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8 MAXINE M. CHESNEY
9 United States District Judge
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