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

WILLIAM G. OLDRIGHT,	)	No. C 07-3231 MMC (PR)
Petitioner,	)	<b>ORDER TO SHOW CAUSE</b>
v.	)	
B. CURRY,	)	
Respondent.	)	

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On June 1, 2007, petitioner, a California prisoner proceeding pro se, filed in the Eastern District of California the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 19, 2007, the action was transferred to this district.

**BACKGROUND**

In 1991, in Kern County Superior Court, petitioner was convicted of second degree murder, and sentenced to a term of 18 years to life in state prison. In 2005, the California Board of Prison Hearings (“BPH”) denied petitioner parole for a third time. Petitioner challenged that decision by habeas petitions filed in the Kern County Superior Court, the California Court of Appeal and the Supreme Court of California. All three habeas petitions were denied.

**DISCUSSION**

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);

United States District Court  
For the Northern District of California

1 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an  
2 order directing the respondent to show cause why the writ should not be granted, unless it  
3 appears from the application that the applicant or person detained is not entitled thereto.”  
4 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the  
5 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See  
6 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,  
7 431 U.S. 63, 75-76 (1977)).

8 B. Petitioner’s Claims

9 Petitioner claims: (1) the denial of parole violated a state created liberty interest,  
10 protected by due process, in that the denial was based upon the unchanging factors of his  
11 murder conviction; (2) his right to due process was violated by the BPH’s requirement that  
12 petitioner accept responsibility for a more egregious offense than the offense of which he was  
13 convicted; and (3) the denial of parole violated his right to due process because it was based  
14 on an unreasonable determination of the facts in light of the evidence presented.

15 Liberally construed, petitioner’s claims are cognizable.

16 **CONCLUSION**

17 For the reasons stated above, the Court orders as follows:

18 1. The Clerk of the Court shall serve by certified mail a copy of this order and the  
19 petition, along with all attachments thereto, upon respondent and respondent’s attorney, the  
20 Attorney General for the State of California. The Clerk shall also serve a copy of this order  
21 on petitioner.

22 2. Respondent shall file with the Court and serve on petitioner, within 90 days of  
23 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules  
24 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
25 granted based on petitioner’s cognizable claims. Respondent shall file with the answer and  
26 serve on petitioner a copy of all portions of the state trial record that have been transcribed  
27 previously and that are relevant to a determination of the issues presented by the petition.

28 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with

1 the Court and serving it on respondent within 30 days of the date the answer is filed.

2 3. In lieu of an answer, respondent may file, within 90 days of the date this order  
3 is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee  
4 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a  
5 motion, petitioner shall file with the Court and serve on respondent an opposition or  
6 statement of non-opposition within 30 days of the date the motion is filed, and respondent  
7 shall file with the Court and serve on petitioner a reply within 15 days of the date any  
8 opposition is filed.

9 4. Petitioner is reminded that all communications with the Court must be served  
10 on respondent by mailing a true copy of the document to respondent's counsel.

11 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
12 Court and respondent informed of any change of address and must comply with the Court's  
13 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
14 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

15 6. Upon a showing of good cause, requests for a reasonable extension of time will  
16 be granted as long as they are filed on or before the deadline they seek to extend.

17 IT IS SO ORDERED.

18 DATED: June 29, 2007

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20 MAKINE M. CHESNEY  
21 United States District Judge  
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