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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARK PISZCZEK

Petitioner,

No. C 07-3724 PJH (PR)

vs.

ORDER TO SHOW CAUSE

B. CURRY, Warden,

Respondents.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. See 28 U.S.C. § 2241(d).

BACKGROUND

Petitioner was convicted of second degree murder in 1986. He received a sentence of fifteen years to life plus one year in prison. He alleges that he has exhausted these parole claims by way of state habeas petitions.

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).

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United States District Court
For the Northern District of California

1 It shall "award the writ or issue an order directing the respondent to show cause why
2 the writ should not be granted, unless it appears from the application that the applicant or
3 person detained is not entitled thereto." *Id.* § 2243.

4 *B. Legal Claims*

5 As grounds for federal habeas relief, petitioner asserts that: (1) the Board violated
6 his due process rights by not giving his case individualized consideration; (2) his due
7 process rights were denied when on June 29, 2006, the Board denied him parole for the
8 fourth time based on the circumstances of his crime; and (3) there was not "some
9 evidence" to support the denial.

10 These claims are sufficient to require a response. See *Biggs v. Terhune*, 334 F.3d
11 910, 916-17 (9th Cir. 2003) (warning that repeated denial of parole based on unchanging
12 characteristics of offense might violate due process); *McQuillion v. Duncan*, 306 F.3d
13 895, 904 (9th Cir. 2002) (due process requires that at least "some evidence" support
14 parole denial).

15 **CONCLUSION**

16 For the foregoing reasons and for good cause shown,

17 1. The clerk shall serve by certified mail a copy of this order and the petition and all
18 attachments thereto on respondent and respondent's attorney, the Attorney General of the
19 State of California. The clerk also shall serve a copy of this order on petitioner.

20 3. Respondent shall file with the court and serve on petitioner, within sixty days of
21 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
22 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
23 granted. Respondent shall file with the answer and serve on petitioner a copy of all
24 portions of the state trial record that have been transcribed previously and that are relevant
25 to a determination of the issues presented by the petition.

26 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
27 the court and serving it on respondent within thirty days of his receipt of the answer.

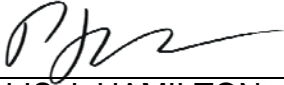
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1 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an
2 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
3 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court
4 and serve on respondent an opposition or statement of non-opposition within thirty days of
5 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
6 within fifteen days of receipt of any opposition.

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

13 **IT IS SO ORDERED.**

14 Dated: 7/24/07



PHYLLIS J. HAMILTON
United States District Judge

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