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FILED
OCT 22 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROY HENRY WHITE,
Petitioner,

No. C 08-3831 MHP (pr)

ORDER TO SHOW CAUSE

v.

BEN CURRY, warden,
Respondent.

INTRODUCTION

Roy Henry White, an inmate at the Correctional Training Facility in Soledad, filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

BACKGROUND

White was convicted in Los Angeles County Superior Court of second degree murder and was found to have used a deadly weapon in the commission of the offense. He was sentenced in 1986 to a term of 15 years to life plus two years in prison. His petition does not challenge his conviction but instead challenges a July 12, 2006 decision by the Board of Parole Hearings ("BPH") to find him not suitable for parole. White filed unsuccessful habeas petition in the California state courts before filing this action.

1 **DISCUSSION**

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

11 White alleges in his petition that his right to due process was violated because the
12 BPH found no evidence of unreasonable risk or current danger. Liberally construed, this is
13 a claim that the evidence was insufficient to support the decision that he was not suitable for
14 parole. The claim is cognizable and warrants a response. See Board of Pardons v. Allen,
15 482 U.S. 369 (1987); Sass v. California Board of Prison Terms, 461 F.3d 1123, 1126-27 (9th
16 Cir. 2006).

17 **CONCLUSION**

18 For the foregoing reasons,

- 19 1. The petition warrants a response from respondent.
- 20 2. The clerk shall serve by certified mail a copy of this order, the petition and all
21 attachments thereto upon respondent and respondent's attorney, the Attorney General of the
22 State of California. The clerk shall also serve a copy of this order on petitioner.
- 23 3. Respondent must file and serve, on or before **December 19, 2008**, an answer
24 conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing
25 cause why a writ of habeas corpus should not be issued. Respondent must file with the
26 answer a copy of all portions of the parole hearing record that have been previously
27 transcribed and that are relevant to a determination of the issues presented by the petition.
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4. If petitioner wishes to respond to the answer, he must do so by filing a traverse with the court and serving it on respondent on or before **January 30, 2009**.

5. Petitioner is responsible for prosecuting this case. He 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).

IT IS SO ORDERED.

DATED: October 22, 2008



Marilyn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROY HENRY WHITE,
Plaintiff,

Case Number: CV08-03831 MHP

CERTIFICATE OF SERVICE

v.

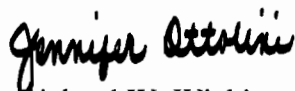
BEN CURRY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roy Henry White CDC D-27085
Correctional Training Facility
P O Box 689
Soledad, CA 93960-0689

Dated: October 23, 2008



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk