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

GARY SINN,

v.

Petitioner,

B. CURRY, Warden, Respondent.

# No. C 08-4579 MMC (PR) **ORDER TO SHOW CAUSE**

On October 1, 2008, petitioner, a California prisoner incarcerated at the Correctional 14 Training Facility at Soledad, California, and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the denial of parole by the California Board of Parole Hearings ("Board"). Petitioner has paid the filing fee.

### BACKGROUND

In 1987, in the Superior Court of Los Angeles County, petitioner was found guilty of 19 first degree murder and robbery. He was sentenced to a term of twenty-six years to life in 20 state prison. On February 7, 2007, the Board, for the fourth time, found petitioner unsuitable 21 for parole. On August 27, 2008, the California Supreme Court denied petitioner's state 22 habeas corpus petition challenging the Board's decision. 23

### DISCUSSION

Standard of Review A. 25

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person 26 in custody pursuant to the judgment of a State court only on the ground that he is in custody 27 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); 28

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

8 B. <u>Petitioner's Claim</u>

9 Petitioner claims the denial of parole violated his federal constitutional right to due
10 process because the Board relied solely on his commitment offense to justify the denial of
11 parole, and, consequently, the Board's decision that petitioner's release would pose an
12 unreasonable risk to public safety was not supported by some evidence. Liberally construed,
13 petitioner's claim is cognizable.

#### CONCLUSION

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

1. The Clerk shall serve by certified mail a copy of this order and the petition, along
 with the exhibits lodged in support thereof, upon respondent and respondent's counsel, the
 Attorney General for the State of California. The Clerk shall also serve a copy of this order
 on petitioner.

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

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
 the Court and serving it on respondent within thirty (30) days of the date the answer is filed.

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3. In lieu of an answer, respondent may file, within **ninety** (90) days of the date this 1 2 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory 3 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the Court and serve on respondent an opposition or 4 5 statement of non-opposition within thirty (30) days of the date the motion is filed, and 6 respondent shall file with the Court and serve on petitioner a reply within fifteen (15) days of 7 the date any opposition is filed.

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

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

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

IT IS SO ORDERED.

DATED: March 16, 2009

afine M. Chesnes

United States District Judge

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