

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

CLINTON LEE JACKSON,

No. C 08-5057 WHA (PR)

Petitioner,

**ORDER TO SHOW CAUSE**

v.

DARYL G. ADAMS, Warden,

Respondent.

---

Petitioner, a California prisoner currently incarcerated at Corcoran State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also requests leave to proceed in forma pauperis.

Venue is proper because the conviction was obtained in Monterey County, which is in this district. *See* 28 U.S.C. § 2241(d).

**STATEMENT**

Petitioner pleaded nolo contendere to charges of driving under the influence and causing bodily injury. He was sentenced to prison for three years. He claims to have exhausted his present issue by way of state habeas petitions.

**DISCUSSION**

**A. STANDARD OF REVIEW**

This court may entertain a petition for 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

1 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose*  
2 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading  
3 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ  
4 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state  
5 court must "specify all the grounds for relief which are available to the petitioner ... and shall  
6 set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of  
7 the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not  
8 sufficient, for the petition is expected to state facts that point to a 'real possibility of  
9 constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
10 688, 689 (1st Cir. 1970). "Habeas petitions which appear on their face to be legally insufficient  
11 are subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d  
12 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

13 **B. LEGAL CLAIMS**

14 As grounds for federal habeas relief, petitioner asserts that his counsel was ineffective in  
15 not telling him that a stayed enhancement that was part of the plea agreement would result in his  
16 receiving a maximum of fifteen percent good time credits in prison, rather than the fifty percent  
17 he expected. This claim is sufficient to require a response.

18 **CONCLUSION**

- 19 1. Leave to proceed in forma pauperis (document number 2 on the docket) is **GRANTED**.
- 20 2. The clerk shall mail a copy of this order and the petition with all attachments to the  
21 respondent and the respondent's attorney, the Attorney General of the State of California. The  
22 clerk shall also serve a copy of this order on the petitioner.
- 23 3. Respondent shall file with the court and serve on petitioner, within sixty days of  
24 service of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
25 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
26 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state  
27 trial record that have been transcribed previously and that are relevant to a determination of the  
28 issues presented by the petition.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


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 days of service of the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in 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 statement of non-opposition within thirty days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within 15 days of receipt of any opposition. If a motion is filed it will be ruled upon without oral argument, unless otherwise ordered.

5. Petitioner is reminded that all communications with the court must be served on respondent by mailing a copy of the document to respondent's counsel. Papers intended to be filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and comply with any orders of the court within the time allowed, or ask for an extension of that time. 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). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

**IT IS SO ORDERED.**

Dated: November 17, 2008.

  
\_\_\_\_\_  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE