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

RANDOLPH GIBBS,

No. C 09-3090 PJH (PR)

Petitioner,

ORDER TO SHOW CAUSE

vs.

B. CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, 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) (venue proper in both district of conviction and district of confinement).

STATEMENT

In 1985 a Riverside County jury convicted petitioner of second degree homicide. He was sentenced to prison for fifteen years to life. 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 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 Section 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 The petition is directed to a denial of parole on May 7, 2007. As grounds for federal
15 habeas relief, petitioner asserts that (1) there was not "some evidence" that he would be a
16 present danger to society if released; (2) there was no evidence to support the denial; and (3) his
17 due process rights were violated by denial of parole largely on the basis of the unchanging
18 characteristics of his conviction offense, in light of extensive evidence of rehabilitation.

19 Because the only due process requirement that goes to the amount of evidence necessary
20 to support a parole denial is that it be supported by "some evidence," issues one and two are
21 duplicative. Issue two will be dismissed. The other claims are sufficient to require a response.
22 *See Biggs v. Terhune*, 334 F.3d 910, 916-17 (9th Cir. 2003) (warning that repeated denial of
23 parole based on unchanging characteristics of offense might violate due process); *McQuillion v.*
24 *Duncan*, 306 F.3d 895, 904 (9th Cir. 2002) (due process requires that at least "some evidence"
25 support parole denial).

26 **CONCLUSION**

27 1. Petitioner's motion for leave to proceed in forma pauperis (document number 2 on
28 the docket) is **GRANTED**.

1 2. Issue two is **DISMISSED**.

2 3. The clerk shall mail a copy of this order and the petition with all attachments to the
3 respondent and the respondent's attorney, the Attorney General of the State of California. The
4 clerk shall also serve a copy of this order on the petitioner.

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

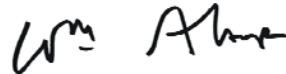
11 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
12 court and serving it on respondent within thirty days of his receipt of the answer.

13 5. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
14 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
15 motion, petitioner shall file with the court and serve on respondent an opposition or statement of
16 non-opposition within thirty days of receipt of the motion, and respondent shall file with the
17 court and serve on petitioner a reply within 15 days of receipt of any opposition.

18 6. Petitioner is reminded that all communications with the court must be served on
19 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be
20 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also
21 must keep the court informed of any change of address by filing a separate paper with the clerk
22 headed "Notice of Change of Address," and comply with any orders of the court within the time
23 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this
24 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*
25 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

26 **IT IS SO ORDERED.**

27 Dated: July 20, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE