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

SAMUEL ALLEN DUBYAK,)	No. C 09-4475 JSW (PR)
Petitioner,)	
vs.)	ORDER TO SHOW CAUSE
BEN CURRY, Warden,)	(Docket No. 2)
Respondent.)	
)	

INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at Correctional Training Facility in Soledad, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision by the California Board of Parole Hearings (“Board”) to deny Petitioner parole. Petitioner has filed an application to proceed *in forma pauperis* which is now GRANTED (docket no. 2). This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted of murder in San Bernardino County Superior Court, and, in 1987, the trial court sentenced him to a term of 25 years-to-life in state prison plus two years. In 2006, the Board found Petitioner unsuitable for parole. Petitioner challenged this decision unsuccessfully in all three levels of the California courts, and thereafter filed a petition for a writ of habeas corpus. Petitioner’s

1 initial habeas petition challenging this decision in this Court was filed under Case No. C
2 08-0667 JSW (PR) was voluntarily dismissed on December 4, 2008. The instant petition
3 was filed on September 22, 2009.

4 DISCUSSION

5 I Standard of Review

6 This court may entertain a petition for a writ of habeas corpus “in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that he is
8 in custody in violation of the Constitution or laws or treaties of the United States.” 28
9 U.S.C. § 2254(a).

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

13 II Legal Claims

14 Petitioner alleges that the Board’s decision violated his rights to equal protection
15 and due process because it was not supported by some evidence and it solely relied on
16 Petitioner’s commitment offense. Liberally construed, the allegations are sufficient to
17 warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369
18 (1987); *see, e.g., Morales. v. California Dep't of Corrections*, 16 F.3d 1001, 1005 (9th
19 Cir. 1994), *rev'd on other grounds*, 514 U.S. 499 (1995).

20 CONCLUSION

21 For the foregoing reasons and for good cause shown,

22 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
23 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
24 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

25 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
26 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
27 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
28

1 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
2 portions of the state trial record that have been transcribed previously and that are relevant
3 to a determination of the issues presented by the petition. If Petitioner wishes to respond
4 to the answer, he shall do so by filing a traverse with the Court and serving it on
5 Respondent within **thirty (30)** days of his receipt of the answer.

6 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
7 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
8 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
9 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
10 days of receipt of the motion, and Respondent shall file with the Court and serve on
11 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

12 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
13 the Court informed of any change of address by filing a separate paper captioned "Notice
14 of Change of Address." He must comply with the Court's orders in a timely fashion.
15 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
16 to Federal Rule of Civil Procedure 41(b).

17 IT IS SO ORDERED.

18 DATED: April 19, 2010

19 
20 _____
21 JEFFREY S. WHITE
22 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 SAMUEL A DUBYAK,
6 Plaintiff,
7

Case Number: CV09-04475 JSW

CERTIFICATE OF SERVICE

8 v.

9 BEN CURRY et al,
10 Defendant.
_____ /

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

13 That on April 19, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Samuel Allen Dubyak
18 CTF-Central
19 D54700
20 P.O. Box 689
21 Soledad, CA 93960-0689

22 Dated: April 19, 2010



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