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

RICHARD A. DEAN,)	No. C 09-5223 JSW (PR)
Petitioner,)	
vs.)	ORDER TO SHOW CAUSE
C. NOLL, Warden,)	(Docket No. 3)
Respondent.)	
)	

INTRODUCTION

Petitioner, a prisoner of the State of California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the Board of Parole Hearings ("BPH") denial of parole during parole suitability proceedings in 2007. Petitioner has filed an application to proceed *in forma pauperis*, which is now GRANTED (docket no. 3). This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, in 1991, in Los Angeles County Superior Court, Petitioner plead guilty to second degree murder. The trial court sentenced him to a term of fifteen years to life in state prison. In this habeas action, Petitioner does not challenge his conviction or sentence, but instead alleges that his due process rights were violated by the denial of parole by the BPH during a subsequent parole suitability hearing in 2007. Petitioner contends that the denial of parole by the BPH during parole suitability proceedings in 2007 violated his constitutional rights and his rights under federal law.

1 He alleges that he has exhausted state judicial remedies as to all of the claims raised in
2 his federal petition.

3 DISCUSSION

4 I. Standard of Review

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

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

12 II. Legal Claims

13 Petitioner alleges that his constitutional rights were violated by the parole denial
14 by the BPH in 2007. Petitioner further contends that his rights were violated the Board's
15 failure to honor his plea agreement. Liberally construed, the allegations are sufficient to
16 warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369
17 (1987); *see, e.g., Morales v. California Dep't of Corrections*, 16 F.3d 1001, 1005 (9th
18 Cir. 1994), *rev'd on other grounds*, 514 U.S. 499 (1995).

19 CONCLUSION

20 For the foregoing reasons and for good cause shown,

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

24 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
25 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
26 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
27 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
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1 portions of the state trial record that have been transcribed previously and that are relevant
2 to a determination of the issues presented by the petition. If Petitioner wishes to respond
3 to the answer, he shall do so by filing a traverse with the Court and serving it on
4 Respondent within **thirty (30)** days of his receipt of the answer.

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

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

16 IT IS SO ORDERED.

17 DATED: April 27, 2010

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

5 RICHARD A. DEAN,
6 Plaintiff,
7

Case Number: CV09-05223 JSW

CERTIFICATE OF SERVICE

8 v.


9 C. NOLL 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 27, 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 Richard A. Dean
18 E87707
19 P.O. Box 689
20 Soledad, CA 93960

Dated: April 27, 2010


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