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

KEITH LETTIER,	No. C 10-0371 JSW (PR)	
Petitioner,)	
vs.	ORDER TO SHOW CAUSE	
ROBERT AYERS, JR., Warden,) (Docket No. 2)	
Respondent.		
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INTRODUCTION

Petitioner, a prisoner of the State of California, currently incarcerated at San Quentin State Prison in San Quentin, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision of the Board of Parole Hearings ("Board") to deny him parole in 2008. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted of second degree murder and was sentenced to 15 years-to-life in state prison. In this habeas action, Petitioner does not challenge his conviction, but instead challenges the execution of his sentence. Petitioner contends that the decision of the Board to deny him parole violates his constitutional rights. He alleges that he has exhausted state judicial remedies as to all of the claims raised in his federal petition.

DISCUSSION

I Standard of Review

This court may entertain a petition for a 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 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It 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." *Id.* § 2243.

II <u>Legal Claims</u>

Petitioner alleges that his constitutional rights were violated by the Board's decision to deny him parole at his 2008 hearing. Liberally construed, the allegations are sufficient to warrant a response from Respondent. *See Board of Pardons v. Allen*, 482 U.S. 369 (1987); *see*, *e.g.*, *Superintendent v. Hill*, 472 U.S. 445 (1985); *Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010).

III Motion for Counsel

Petitioner has filed a motion seeking appointment of counsel (docket no. 2). The Sixth Amendment's right to counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. § 3006A(a)(2)(B) authorizes appointment of counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require and such person is financially unable to obtain representation." The decision to appoint counsel is within the discretion of the district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Knaubert*, 791 F.2d at 728.

Here, Petitioner appears to have effectively represented himself thus far and no evidentiary hearing appears necessary at this time. The Court concludes that the interests of justice do not require appointment of counsel at this time. Accordingly, Petitioner's motion for appointment of counsel (docket no. 2) is DENIED without prejudice.

CONCLUSION

For the foregoing reasons and for good cause shown,

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- 1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.
- 2. Respondent shall file with the Court and serve on Petitioner, within **sixty** (60) days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state record that have been transcribed previously and that are relevant to a determination of the issues presented by the 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 his receipt of the answer.
- 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory 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 statement of non-opposition within **thirty** (30) days of receipt of the motion, and Respondent shall file with the Court and serve on Petitioner a reply within **fifteen** (15) days of receipt of any opposition.
- 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court informed of any change of address by filing a separate paper captioned "Notice of Change of Address." He must comply with the Court's orders in a timely fashion. 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).

IT IS SO ORDERED.

DATED: September 17, 2010

JEFFŘEÝ S. WHITE

United States District Judge

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1	UNITED STATES DISTRICT COURT			
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3	NORTHERN DISTRICT OF CALIFORNIA			
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10	Defendant/			
11		IIC District		
12	I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, Court, Northern District of California.	U.S. District		
13	That on September 17, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by			
14	depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.			
15	15 derivery receptable located in the Clerk's office.			
16	16			
17	17 Keith L. Lettier E50464			
18	18 San Quentin State Prison			
19	San Quentin, CA 94974 Dated: September 17, 2010			
20	Richard W. Wieking, Clerk By: Jennifer Ottolini, Deputy Clerk			
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