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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
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9 JACKIE OSBY,

No. C 10-1691 SI (pr)

10 Petitioner,

ORDER TO SHOW CAUSE

11 v.

12 C. NOLL, warden,

13 Respondent.
14 _____/

15 **INTRODUCTION**

16 Jackie Osby, an inmate at Correctional Training Facility in Soledad, filed this pro se
17 action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before
18 the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section
19 2254 Cases.
20

21 **BACKGROUND**

22 The petition provides the following information: Osby is serving a sentence of 15 years
23 to life on a 1991 conviction in Kern County Superior Court for second degree murder. His
24 petition does not challenge that conviction but instead challenges a September 3, 2008 decision
25 by the Board of Parole Hearings ("BPH") to find him not suitable for parole. Osby reports that
26 he filed unsuccessful habeas petitions in the state courts, including the California Supreme
27 Court, before filing this action.
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1 **DISCUSSION**

2 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
3 custody pursuant to the judgment of a State court only on the ground that he is in custody in
4 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A
5 district court considering an application for a writ of habeas corpus shall "award the writ or issue
6 an order directing the respondent to show cause why the writ should not be granted, unless it
7 appears from the application that the applicant or person detained is not entitled thereto." 28
8 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are
9 vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v.
10 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

11 Osby alleges in his petition that the BPH's decision violated his federal right to due
12 process because it was not supported by sufficient evidence. The federal due process claim is
13 cognizable and warrants a response.

14
15 **CONCLUSION**

16 For the foregoing reasons,

- 17 1. The petition warrants a response.
- 18 2. The clerk shall serve by certified mail a copy of this order, the petition and all
19 attachments thereto upon respondent and respondent's attorney, the Attorney General of the State
20 of California. The clerk shall also serve a copy of this order on petitioner.
- 21 3. Respondent must file and serve upon petitioner, on or before **October 1, 2010**, an
22 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
23 showing cause why a writ of habeas corpus should not be issued. Respondent must file with the
24 answer a copy of all portions of the parole hearing record that have been previously transcribed
25 and that are relevant to a determination of the issues presented by the petition.
- 26 4. If petitioner wishes to respond to the answer, he must do so by filing a traverse
27 with the court and serving it on respondent on or before **November 5, 2010**. Petitioner's traverse
28


1 may not exceed 20 pages in length.

2 5. Petitioner is responsible for prosecuting this case. He must keep the court
3 informed of any change of address and must comply with the court's orders in a timely fashion.
4 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
5 Federal Rule of Civil Procedure 41(b).

6 6. Petitioner's in forma pauperis application is DENIED as unnecessary because
7 he paid the filing fee. (Docket # 2, # 4.)

8 IT IS SO ORDERED.

9 DATED: July 30, 2010



SUSAN ILLSTON
United States District Judge

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