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

DANIEL RICHARDS,

No. C 10-3007 WHA (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

A. NOLL, Warden,

Respondent.

INTRODUCTION

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, California, 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 the 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 1988, petitioner was convicted of second-degree murder in Los Angeles County Superior Court, and he was sentenced to a term of fifteen years to life in state prison. In 2009, the California Board of Parole Hearings (“Board) found petitioner unsuitable for parole for a seventh time. Petitioner challenged this decision unsuccessfully via habeas petitions filed in all three levels of the California courts.

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1 ANALYSIS

2 A. STANDARD OF REVIEW

3 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
4 custody pursuant to the judgment of a State court only on the ground that he is in custody in
5 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*
6 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading
7 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
8 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
9 court must "specify all the grounds for relief which are available to the petitioner ... and shall
10 set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of
11 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. "[N]otice' pleading is not
12 sufficient, for the petition is expected to state facts that point to a 'real possibility of
13 constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
14 688, 689 (1st Cir. 1970).

15 B. LEGAL CLAIMS

16 As grounds for federal habeas relief, petitioner claims that the denial of parole violated
17 his right to due process because it was not based on sufficient evidence of his current
18 dangerousness. Petitioner's claim, when liberally construed, is cognizable.

19 CONCLUSION

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

23 2. Respondent shall file with the court and serve on petitioner, within ninety days of the
24 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
25 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on
26 the claims found cognizable herein. Respondent shall file with the answer and serve on
27 petitioner a copy of all portions of the state trial record that have been transcribed previously
28 and that are relevant to a determination of the issues presented by the petition.

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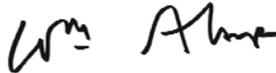
If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty days of the date the answer is filed.

3. Respondent may file, within ninety days, 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 days of the date the motion is filed, and respondent shall file with the court and serve on petitioner a reply within fifteen days of the date any opposition is filed.

4. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep the court informed of any change of address and 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). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

Dated: September 2 , 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE