

1 Governor Schwarzenegger's 2009 decision were denied, respectively, by the California Court
2 of Appeal on March 9, 2010, and the California Supreme Court on June 17, 2010.

3 **DISCUSSION**

4 A. Standard of Review

5 This Court may entertain a petition for a writ of habeas corpus "in behalf of a person
6 in custody pursuant to the judgment of a State court only on the ground that he is in custody
7 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);
8 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an
9 order directing the respondent to show cause why the writ should not be granted, unless it
10 appears from the application that the applicant or person detained is not entitled thereto."
11 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
12 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
13 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
14 431 U.S. 63, 75-76 (1977)).

15 B. Petitioner's Claim

16 Petitioner claims the Governor's reversal of the Board's decision to grant parole
17 violated his federal constitutional right to due process because it was not based on some
18 evidence that petitioner's release would pose an unreasonable risk to public safety. Liberally
19 construed, petitioner's claim is cognizable.

20 C. Request for Appointment of Counsel

21 Petitioner requests appointment of counsel to represent him in the instant action. The
22 Sixth Amendment's right to counsel does not apply in habeas actions. Knaubert v.
23 Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Pursuant to
24 statute, however, a district court is authorized to appoint counsel to represent a habeas
25 petitioner whenever "the court determines that the interests of justice so require and such
26 person is financially unable to obtain representation." See 18 U.S.C. § 3006A(a)(2)(B).

27 Here, petitioner's claims have been adequately presented in the petition. Moreover,
28 the exhibits lodged in support of the petition include the briefs prepared and filed on

1 petitioner's behalf by court-appointed habeas counsel in the California Court of Appeal.
2 Consequently, the interests of justice do not require appointment of counsel in the instant
3 case at this time. Should the circumstances change materially at a later stage of the litigation,
4 the Court will reconsider this decision sua sponte. Accordingly, the request for appointment
5 of counsel will be denied.

6 D. Request to Proceed In Forma Pauperis

7 Petitioner seeks leave to proceed in forma pauperis herein. Good cause appearing, the
8 request will be granted.

9 **CONCLUSION**

10 For the reasons stated above, the Court orders as follows:

11 1. Petitioner's request for appointment of counsel is hereby DENIED.

12 2. Petitioner's request to proceed in forma pauperis is hereby GRANTED.

13 3. The Clerk shall serve by certified mail a copy of this order and the petition, along
14 with the exhibits lodged in support thereof, upon respondent and respondent's counsel, the
15 Attorney General for the State of California. The Clerk shall also serve a copy of this order
16 on petitioner.

17 4. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**
18 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
19 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
20 be granted based on petitioner's cognizable claims. Respondent shall file with the answer
21 and serve on petitioner a copy of all portions of the state trial record that have been
22 transcribed previously and that are relevant to a determination of the issues presented by the
23 petition.

24 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
25 the Court and serving it on respondent within **thirty (30)** days of the date the answer is filed.

26 5. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
27 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
28 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files

1 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
2 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
3 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
4 the date any opposition is filed.

5 6. Petitioner is reminded that all communications with the Court must be served on
6 respondent by mailing a true copy of the document to respondent's counsel.

7 7. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
8 Court and respondent informed of any change of address and must comply with the Court's
9 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
10 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

11 8. Upon a showing of good cause, requests for a reasonable extension of time will be
12 granted as long as they are filed on or before the deadline they seek to extend.

13 This order terminates Docket Nos. 1, 5 and 8.

14 IT IS SO ORDERED.

15 DATED: November 19, 2010


MAXINE M. CHESNEY
United States District Judge