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United States District Court
For the Northern District of California

E-Filed 9/23/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WILLIAM OLIVER SIZEMORE,

No. C 10-3406 RS (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

R. GROUNDS, Warden,

Respondent.

INTRODUCTION

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. The petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

BACKGROUND

According to the petition, petitioner was convicted in 1985 of first degree murder, and was sentenced to twenty-eight years to life in state prison. In February 2009, the Board of Parole Hearings found petitioner suitable for parole. In July 2009, the Governor reversed the Board's decision, and found petitioner unsuitable for parole. In response to the Governor's decision, petitioner sought, but was denied state habeas relief. This federal petition followed.

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DISCUSSION

This Court may entertain a petition for 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). A district court considering an application for a writ of habeas corpus 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.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

As grounds for federal habeas relief, petitioner alleges that the Governor’s decision violated his right to due process because (1) it was not supported by some evidence of petitioner’s current dangerousness; and (2) relied on the unchanging factor of petitioner’s criminal history and ignored evidence of rehabilitation. Liberally construed, the claims appear to be cognizable in a federal habeas action.

CONCLUSION

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1. The Clerk shall serve by certified mail a copy of this order, the petition and all attachments thereto, on respondent and respondent’s counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)** days of the date this order is filed, 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 based on petitioner’s cognizable claims. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that previously have been transcribed and that are relevant to a determination of the issues presented by the petition.

3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse

1 with the Court and serving it on respondent's counsel within **thirty (30)** days of the date the
2 answer is filed.

3 4. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
4 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
5 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
6 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
7 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
8 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
9 the date any opposition is filed.

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

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

16 7. Upon a showing of good cause, requests for a reasonable extension of time will be
17 granted provided they are filed on or before the deadline they seek to extend.

18 **IT IS SO ORDERED.**

19 DATED: September 23, 2010


20 RICHARD SEEBORG
21 United States District Judge