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

EDWARD JOHN AULT,

No. C 10-4987 WHA (PR)

Petitioner,

ORDER OF DISMISSAL

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS,

Respondent.

INTRODUCTION

Petitioner, a state parolee, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. 2254 challenging the imposition of certain conditions on his parole pursuant to California's Sexually Violent Predator Act ("SVPA"). *See* Cal. Welfare & Inst. Code §§ 6600-6609.3. He has paid the filing fee.

STATEMENT

According to the petition, petitioner was convicted in Santa Clara County Superior Court of felony drunk driving. He was placed on probation, but he violated the terms of his probation and was sentenced to a term of sixteen months in state prison. He was thereafter granted parole, but before he was released, the California Department of Corrections and Rehabilitation placed hold on him pursuant to the SVPA based upon a 1991 sex offense. He has since been released from prison and his serving his three-year parole term, but he continues to be subject to certain conditions of his parole pursuant to the SVPA, such as reporting to a parole officer in San Jose and not entering into a relationship with someone who has a minor

1 child.

2 The attachments to the petition indicate that petitioner has previously filed a habeas
3 petition in the California Supreme Court, which was denied recently.

4 **ANALYSIS**

5 **A. STANDARD OF REVIEW**

6 Upon the filing of a petition for a writ of habeas corpus pursuant to 28 U.S.C. §
7 2241(c)(3), a court should "award the writ or issue an order directing the respondent to show
8 cause why the writ should not be granted, unless it appears from the application that the
9 applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

10 **B. LEGAL CLAIM**

11 Petitioner claims that the imposition of conditions on his parole pursuant to the SVPA
12 violates his rights under the Double Jeopardy Clause because he was already punished for his
13 1991 sex offense. The United States Supreme Court has rejected challenges on Double
14 Jeopardy and Ex Post Facto grounds to a similar sexual offender statute because of the civil
15 nature of the statute. *Seling v. Young*, 531 U.S. 250 (2001). In addition, the California Supreme
16 Court rejected such challenges to the SVPA because it is a civil statute. *Hubbart v. Superior*
17 *Court*, 19 Cal. 4th 1138 (1999); *see also Hydrick v. Hunter*, 500 F.3d 978, 993 (9th Cir. 2007)
18 *rev'd on other grounds*, 129 S. Ct. 2431 (2009) (discussing *Seling* and *Hubbart* in holding that
19 civil nature of SVPA means challenges to its application under Double Jeopardy and Ex Post
20 Facto Clauses are foreclosed, even if individuals argue statute is punitive "as applied" to them).
21 In light of this authority, petitioner's claims that the application of provisions of the SVPA to
22 him violate his rights under the Double Jeopardy Clause are foreclosed because the SVPA is a
23 civil statute. Accordingly, he has failed to state a cognizable claim for federal habeas relief.

24 **CONCLUSION**

25 For the foregoing reasons, the petition for a writ of habeas corpus is **DISMISSED** for
26 failure to state a cognizable claim for relief.

27 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to
28 rule on whether a petitioner is entitled to a certificate of appealability in the same order in

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which the petition is denied. Petitioner has failed to make a substantial showing that his claims amounted to a denial of his constitutional rights or demonstrate that a reasonable jurist would find the denial of his claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this case.

The clerk shall close the file.

IT IS SO ORDERED.

Dated: November 30, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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