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

MARK THOMAS GRUNEAU,

No. C 10-5688 WHA (PR)

Petitioner,

**ORDER GRANTING MOTION TO
FILE AMENDED PETITION; TO
SHOW CAUSE**

v.

RICK M. HILL, Warden,

Respondent.

(Docket No. 3)

INTRODUCTION

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. He has paid the filing fee. Petitioner has also filed a motion to file an amended petition, with the proposed amended petition attached.

STATEMENT

In 1996 petitioner was convicted in Santa Clara County Superior Court of annoying or molesting a child with a prior felony conviction, and of loitering on school grounds. Petitioner was also found to have two prior “strike” convictions. The trial court sentenced him to a term of 25-years-to-life in state prison under California’s “Three Strikes” Law. The California Court of Appeal dismissed his appeal due to appellate counsel’s failure to file an opening brief. In 2009, the California Court of Appeal granted a habeas petition seeking to reinstate the direct appeal. The Court of Appeal then affirmed petitioner’s convictions and sentence, and the California Supreme Court denied a petition for review in 2010.

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 (1) his right to due process
17 was violated because there was insufficient evidence to support a conviction for annoying or
18 molesting a child; and (2) admission of evidence of his prior sexual offenses violated due
19 process.

20 Petitioner's claims, when liberally construed, are cognizable.

21 CONCLUSION

22 1. The motion for leave to file an amended petition (docket number 3) is **GRANTED**.

23 2. The clerk shall mail a copy of this order and the amended petition with all
24 attachments to the respondent and the respondent's attorney, the Attorney General of the State
25 of California. The clerk shall also serve a copy of this order on the petitioner.

26 3. Respondent shall file with the court and serve on petitioner, within ninety days of the
27 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
28 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on

1 the claims found cognizable herein. Respondent shall file with the answer and serve on
2 petitioner a copy of all portions of the state trial record that have been transcribed previously
3 and that are relevant to a determination of the issues presented by the petition.


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

6 4. Respondent may file, within ninety days, a motion to dismiss on procedural grounds
7 in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
8 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the
9 court and serve on respondent an opposition or statement of non-opposition within thirty days
10 of the date the motion is filed, and respondent shall file with the court and serve on petitioner a
11 reply within fifteen days of the date any opposition is filed.

12 5. Petitioner is reminded that all communications with the court must be served on
13 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must
14 keep the court informed of any change of address and must comply with the court's orders in a
15 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
16 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772
17 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

18 **IT IS SO ORDERED.**

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20 Dated: February 10, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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