

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

11 **B. LEGAL CLAIMS**

12 As grounds for federal habeas relief, petitioner claims that he was not present when he
13 was re-sentenced, preventing him from testifying, presenting evidence, filing a motion for a
14 new trial, requesting a new pre-sentence report, and challenging his restitution fine. Petitioner
15 also claims that he did not have counsel at his re-sentencing hearing, and to the extent he did
16 have counsel, counsel was ineffective. Petitioner's claims, when liberally construed, are
17 cognizable.

18 **CONCLUSION**

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

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

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

1 court and serving it on respondent within thirty days of the date the answer is filed.

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

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

14 5. Leave to proceed in forma pauperis (docket number 2) is **DENIED** as petitioner paid
15 the fee.

16 **IT IS SO ORDERED.**

17 Dated: October 28, 2011.

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19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
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