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

TERRY R. HAWES,
Petitioner,
v.
R. GROUNDS,
Respondent.

No. C 14-3189 WHA (PR)
**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS; DENYING
APPOINTMENT OF COUNSEL**

(Dkt. 2, 4, 5)

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INTRODUCTION

Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging his conviction in state court. He is granted leave to proceed in forma pauperis, and respondent is ordered to show cause why the petition should not be granted.

STATEMENT

Petitioner was convicted in Marin County Superior Court of attempted rape, terrorist threats, threats to dissuade a witness, assault, and forcible penetration. He was sentenced to a term of 27 years and eight months to life in state prison. In 2012, the California Supreme Court ordered the sentence reduced.

ANALYSIS

A. STANDARD OF REVIEW

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); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading

United States District Court
For the Northern District of California

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

9 **B. LEGAL CLAIMS**

10 Petitioner claims that he was denied his right to counsel at the preliminary hearing
11 because he was allowed to represent himself despite being mentally incompetent. When
12 liberally construed, this claim is sufficient to warrant an answer from respondent.

13 **CONCLUSION**

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

17 2. Respondent shall file with the court and serve on petitioner, within ninety-one days
18 of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
19 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
20 granted based on the claim found cognizable herein. Respondent shall file with the answer and
21 serve on petitioner a copy of all portions of the state prison disciplinary proceedings that are
22 relevant to a determination of the issues presented by the petition.

23 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
24 court and serving it on respondent within twenty-eight days of the date the answer is filed.

25 3. Respondent may file, within ninety-one days, a motion to dismiss on procedural
26 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
27 Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file
28 with the court and serve on respondent an opposition or statement of non-opposition within

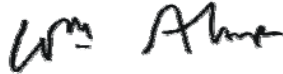
1 twenty-eight days of the date the motion is filed, and respondent shall file with the court and
2 serve on petitioner a reply within fourteen days of the date any opposition is filed.

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

9 5. Leave to proceed in forma pauperis (dkt. 2, 5) is **GRANTED**. The motion for
10 appointment of counsel (dkt. 4) is **Denied** without prejudice; counsel will be appointed sua
11 sponte at a later date if the circumstances of this case require, such as if an evidentiary hearing
12 becomes necessary.

13 **IT IS SO ORDERED.**

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15 Dated: August 11, 2014.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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