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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONEL LEROY ARDERY,
Petitioner,
v.
THE PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

Case No. [14-cv-03548-JD](#)

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS AND
FOR PETITIONER TO SHOW CAUSE**

Re: Dkt. Nos. 5, 7

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also applied for leave to proceed in forma pauperis.

DISCUSSION

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

1 **II. LEGAL CLAIMS**

2 Petitioner argues that he received ineffective assistance of counsel during trial and his
3 appeal. However, petitioner states that he was convicted in 1981 and has filed multiple habeas
4 petitions in the Central District of California that were dismissed for failure to exhaust or as time
5 barred in 1991, 1999, and 2000. “A claim presented in a second or successive habeas corpus
6 application under section 2254 that was not presented in a prior application shall be dismissed . . .”

7 28 U.S.C. § 2244(b)(2). This is the case unless,

8 (A) the applicant shows that the claim relies on a new rule of
constitutional law, made retroactive to cases on collateral review by
the Supreme Court, that was previously unavailable; or

9 (B) (i) the factual predicate for the claim could not have been
discovered previously through the exercise of due diligence; and

10 (ii) the facts underlying the claim, if proven and viewed in
light of the evidence as a whole, would be sufficient to establish by
11 clear and convincing evidence that, but for constitutional error, no
reasonable factfinder would have found the applicant guilty of the
underlying offense.

12 28 U.S.C. § 2244(b)(2).

13 “Before a second or successive application permitted by this section is filed in the
14 district court, the applicant shall move in the appropriate court of appeals for an order authorizing
15 the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). It does not appear that
16 petitioner has received authorization from the Ninth Circuit to file this petition, therefore he will
17 be ordered to show cause why this case should not be dismissed. As it appears that petitioner was
18 convicted in the Central District of California and is currently incarcerated in the Eastern District
19 of California he must also address why the case should not be transferred.

20 **CONCLUSION**

21 1. Petitioner’s motion for an extension (Docket No. 5) is **GRANTED** and leave to
22 proceed in forma pauperis (Docket No. 7) is **GRANTED**.

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25 2. Petitioner must show cause in twenty-one (21) days why this case should not be
26 dismissed as successive or transferred. Failure to file a response will result in this case being
27 dismissed.
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IT IS SO ORDERED.

Dated: December 4, 2014



JAMES DONATO
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONEL LEROY ARDERY,
Plaintiff,

v.

THE PEOPLE OF THE STATE OF
CALIFORNIA,
Defendant.

Case No. [14-cv-03548-JD](#)

CERTIFICATE OF SERVICE

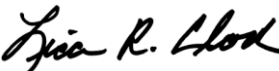
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/4/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Donel Leroy Ardery
C.S.A.T.F.
P.O. Box 5242
#C38078
Corcoran, CA 93212-5242

Dated: 12/4/2014

Richard W. Wieking
Clerk, United States District Court

By:  _____
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO