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

CECIL JEROME HATCHETT,

No. C 15-2959 WHA (PR)

Petitioner,

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

v.

GONZALEZ,

(Dkt. No. 12, 13)

Respondent.

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 state court conviction. He has applied for leave to proceed in forma pauperis. For the reasons discussed below, respondent is ordered to show cause why the petition should not be granted.

STATEMENT

In 2000, petitioner was convicted in Alameda County Superior Court on a variety of counts. His sentence, which was enhanced based on his having suffered prior serious felonies, was for a term of 55 years to life in state prison. Habeas petitions raising the claims raised herein were denied by the California Court of Appeal and the Supreme Court of California. Thereafter, he filed the instant federal petition.

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

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 set
6 forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the
7 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 Petitioner claims that he is factually innocent of the sentence enhancement for having
13 prior serious felonies. When liberally construed, this claim warrants a response from
14 respondent. *See, e.g., Vosgien v. Persson*, 742 F.3d 1131, 1134-35 (9th Cir. 2014).

15 **CONCLUSION**

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

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

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

27 3. Respondent may file, within ninety-one days, a motion to dismiss on procedural
28 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the

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Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within twenty-eight days of the date the motion is filed, and respondent shall file with the court and serve on petitioner a reply within fourteen days of the date any opposition is filed.


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

5. Leave to proceed in forma pauperis is **GRANTED** based on petitioner's lack of funds.

This order terminates docket numbers 12 and 13.

IT IS SO ORDERED.

Dated: August 3, 2015.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CECIL JEROME HATCHETTE,
Petitioner,

Case Number: CV15-02959 WHA
CERTIFICATE OF SERVICE

v.

GONZALEZ,
Respondent.

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 August 3, 2015, 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.

Cecil Jerome Hatchett H-22191
CSP Los Angeles
P.O. Box 8457
Lancaster, CA 93539-8457

Dated: August 3, 2015

Richard W. Wieking, Clerk



By: Tracy Lucero, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CECIL JEROME HATCHETTE,
Plaintiff,

Case Number: CV15-02959 WHA
CERTIFICATE OF SERVICE

v.

GONZALEZ,
Defendant.

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

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Cecil Jerome Hatchett H-22191
CSP Los Angeles
P.O. Box 8457
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Attorney General's Office
455 Golden Gate Avenue
San Francisco, CA 94102

Dated: August 3, 2015

Richard W. Wieking, Clerk



By: Tracy Lucero, Deputy Clerk