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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 DAVID A. NWAONUMAH,
8 Petitioner,
9 v.
10 M. E. SPEARMAN,
11 Respondent.

Case No. [15-cv-04196-WHO](#) (PR)
ORDER REOPENING ACTION;
ORDER TO SHOW CAUSE
Dkt. No. 28

12
13 **INTRODUCTION**

14 This federal habeas action was stayed at petitioner Nwaonumah's request so that he
15 could exhaust his state court remedies. Nwaonumah now moves to lift the stay on grounds
16 that he has exhausted his claims. (Dkt. No. 28.) The motion is GRANTED, the stay is
17 LIFTED, and the action is REOPENED. The Clerk is directed to modify the docket
18 accordingly.

19 Nwaonumah seeks federal habeas relief from a state prison disciplinary decision.
20 The petition for such relief has been reviewed under 28 U.S.C. § 2243 and Rule 4 of the
21 Rules Governing Section 2254 Cases and has been found to state cognizable claims.
22 Accordingly, on or before **February 20, 2018**, respondent shall file an answer or
23 dispositive motion in response to the habeas petition.

24 **BACKGROUND**

25 Nwaonumah filed this habeas action to challenge the loss of credits he suffered as
26 the result of a prison disciplinary decision at Soledad State Prison in 2013. In response to
27 the petition, the Court issued an order to show cause. Respondent then moved to dismiss
28 the petition as unexhausted and procedurally defaulted. The Court agreed that the petition

1 was not exhausted, and, at Nwaonumah’s request, stayed the petition so that he could
2 exhaust his state court remedies. The Court did not address respondent’s procedural
3 default contentions.

4 **DISCUSSION**

5 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
6 in custody pursuant to the judgment of a State court only on the ground that he is in
7 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
8 § 2254(a). A district court considering an application for a writ of habeas corpus shall
9 “award the writ or issue an order directing the respondent to show cause why the writ
10 should not be granted, unless it appears from the application that the applicant or person
11 detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate
12 only where the allegations in the petition are vague or conclusory, palpably incredible, or
13 patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

14 As grounds for federal habeas relief, Nwaonumah alleges respondent violated his
15 right to due process when it found him guilty under the “some evidence” rather than the
16 preponderance standard. He alleges the state courts erred in applying the “some evidence”
17 standard as well. When liberally construed, this claim is cognizable on federal habeas
18 review. Because the Court has not yet addressed respondent’s procedural default
19 contentions, respondent is free to raise them again.

20 **CONCLUSION**

21 1. The Clerk shall serve a copy of this order, the petition and all attachments
22 thereto, on respondent and respondent’s counsel, the Attorney General for the State of
23 California. The Clerk shall also serve a copy of this order on petitioner.

24 2. On or before **February 19, 2018**, respondent shall file with the Court and serve
25 on petitioner, an answer conforming in all respects to Rule 5 of the Rules Governing
26 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted
27 based on petitioner’s cognizable claims. Respondent shall file with the answer and serve
28 on petitioner a copy of all portions of the state trial record that previously have been

1 transcribed and that are relevant to a determination of the issues presented by the petition.

2 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
3 with the Court and serving it on respondent's counsel within thirty (30) days of the date the
4 answer is filed.

5 4. In lieu of an answer, respondent may file, on or before **February 19, 2018**, a
6 motion to dismiss on procedural grounds, as set forth in the Advisory Committee Notes to
7 Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion,
8 petitioner shall file with the Court and serve on respondent an opposition or statement of
9 non-opposition within thirty (30) days of the date the motion is filed, and respondent shall
10 file with the Court and serve on petitioner a reply within fifteen (15) days of the date any
11 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.

14 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
15 Court and respondent informed of any change of address and must comply with the
16 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this
17 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

18 7. Upon a showing of good cause, requests for a reasonable extension of time will
19 be granted provided they are filed on or before the deadline they seek to extend.

20 8. Petitioner's motion to reopen (Dkt. No. 28) is GRANTED.

21 9. The Clerk shall terminate Dkt. No. 28.

22 **IT IS SO ORDERED.**

23 **Dated:** December 7, 2017

24 
25 WILLIAM H. ORRICK
26 United States District Judge
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