

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD HAYTER,
Petitioner,
v.
ERIC ARNOLD,
Respondent.

Case No. [16-cv-04220-JD](#)

**ORDER FOR PETITIONER TO
SHOW CAUSE**

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

DISCUSSION

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LEGAL CLAIMS

Petitioner presents many claims regarding his 2004 conviction. However, court records indicate that petitioner previously filed a habeas petition concerning the same conviction. *See Hayter v. Clark*, Case No. 09-cv-0457-JF. In that case, the Court granted a motion to dismiss as untimely and the Ninth Circuit denied petitioner’s motion for a certificate of appealability. Docket Nos. 27, 37 in Case No. 09-cv-0457-JF. “A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . .” 28 U.S.C. § 2244(b)(2). This is the case unless,

- (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
- (B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
- (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2).


“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). It does not appear that petitioner has received authorization from the Ninth Circuit to file this petition, therefore he will be ordered to show cause why this case should not be dismissed.

CONCLUSION

Petitioner must show cause in **twenty-one (21) days** why this case should not be dismissed as successive. Failure to file a response will result in this case being dismissed.

IT IS SO ORDERED.

Dated: August 31, 2016



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 CLIFFORD HAYTER,
5 Plaintiff,
6 v.
7 ERIC ARNOLD,
8 Defendant.

Case No. [16-cv-04220-JD](#)

CERTIFICATE OF SERVICE

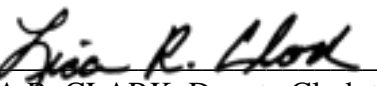
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on August 31, 2016, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.

16
17 Clifford Hayter ID: V32822
18 C.S.P. Solano
19 P.O. Box 4000
20 Vacaville, CA 95696

21 Dated: August 31, 2016

22
23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO