

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MANSE SULLIVAN,
Petitioner,
v.
AUDREY KING,
Respondent.

Case No. [17-cv-02546-RS](#) (PR)

ORDER TO SHOW CAUSE

INTRODUCTION

Petitioner seeks federal habeas relief from his civil detention under California’s Sexually Violent Predator Act (“SVPA”), Welf. & Inst. Code (“CWIC”) §§ 6600–04, as amended in 2006 by SB1128 and Proposition 83. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

The petition appears to state claims for relief. In consequence, respondent shall file a response to the petition on or before **October 2, 2017**, unless an extension is granted.

BACKGROUND

Petitioner is civilly committed for an indeterminate term at Coalinga State Hospital as a sexually violent predator (“SVP”). An SVP is an individual “who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it

1 is likely that he or she will engage in sexually violent criminal behavior.” CWIC
2 § 6600(a).

3 In July 2005, the Santa Clara District Attorney filed a petition in state court to
4 extend petitioner’s civil detention. Prior to the detention trial, the SVPA was amended to
5 provide for an indeterminate term of commitment, and the District Attorney subsequently
6 filed an amended petition, reflecting the statutory amendment. The jury found the petition
7 true, and the state court extended petitioner’s commitment for an indefinite period.

8 In 2009 in this Court, petitioner filed a petition for federal habeas relief from the
9 jury’s determination that the petition was true. (*Sullivan v. Kramer*, 3:09-cv-03690-RS,
10 Dkt. No. 1). The Court denied his petition and entered judgment in favor of respondent.
11 (*Id.*, Dkt. Nos. 31 and 32.) Petitioner appealed, but the Ninth Circuit terminated his appeal
12 when it denied his request for a certificate of appealability. (*Id.*, Dkt. No. 37.) Petitioner
13 asked the U.S. Supreme Court for review, but his petition was denied. (*Id.*, Dkt. No. 40.)

14 The current petition is an attempt to secure discharge from his indeterminate
15 detention. An SVP is allowed to file in the state superior court a petition for discharge
16 under CWIC § 6608. It appears petitioner filed such petitions in the state courts, which
17 were all denied. Whether his petitions comported with state law requirements, this Court
18 cannot say.

19 **DISCUSSION**

20 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
21 in custody pursuant to the judgment of a State court only on the ground that he is in
22 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
23 § 2254(a). A district court considering an application for a writ of habeas corpus shall
24 “award the writ or issue an order directing the respondent to show cause why the writ
25 should not be granted, unless it appears from the application that the applicant or person
26 detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate
27 only where the allegations in the petition are vague or conclusory, palpably incredible, or

1 patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

2 As grounds for federal habeas relief, petitioner claims there is no evidence to
3 support a finding that he is an SVP, as shown by allegedly inadequate annual commitment
4 evaluations. When liberally construed, this claim is cognizable on federal habeas review.

5 **CONCLUSION**

6 1. The Clerk shall serve a copy of this order, the petition and all attachments
7 thereto, on respondent and respondent's counsel, the Attorney General for the State of
8 California. The Clerk shall also serve a copy of this order on petitioner.

9 2. Respondent shall file with the Court and serve on petitioner on or before
10 **October 2, 2017** an answer conforming in all respects to Rule 5 of the Rules Governing
11 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted
12 based on petitioner's cognizable claims. Respondent shall file with the answer and serve
13 on petitioner a copy of all portions of the state trial record that previously have been
14 transcribed and that are relevant to a determination of the issues presented by the petition.

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

18 4. In lieu of an answer, respondent may file, within sixty (60) days of the date this
19 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
20 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent
21 files such a motion, petitioner shall file with the Court and serve on respondent an
22 opposition or statement of non-opposition within thirty (30) days of the date the motion is
23 filed, and respondent shall file with the Court and serve on petitioner a reply within fifteen
24 (15) days of the date any opposition is filed.

25 5. Petitioner is reminded that all communications with the Court must be served on
26 respondent by mailing a true copy of the document to respondent's counsel.

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

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

7 8. The Clerk shall amend the docket to reflect that Audrey King, the executive
8 director of the institution in which petitioner is housed, is the sole respondent in this
9 action. Petitioner erroneously also named the California Department of Mental Health as
10 co-respondent. King, not the Department, is the sole proper respondent in this action, as
11 she is the custodian having day-to-day control over petitioner, the only person who can
12 produce “the body” of the petitioner. *Brittingham v. United States*, 982 F.2d 378, 379 (9th
13 Cir. 1992) (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)).

14 9. Petitioner’s application to proceed *in forma pauperis* (Dkt. No. 2) is
15 GRANTED.

16 10. The Clerk shall terminate Dkt. No. 2.

17 **IT IS SO ORDERED.**

18 **Dated:** July 24, 2017



RICHARD SEEBORG
United States District Judge

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