

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RODNEY BLACH,

Petitioner,

vs.

JOHN DOVEY, Director of Adult
Institutions, CDCR,

Respondent.

No. C 05-4446 PJH (PR)

**ORDER DENYING
PETITIONER'S MOTION FOR
LEAVE TO AMEND; PARTIAL
DISMISSAL AND ORDER TO
SHOW CAUSE**

This is a habeas case filed pro se by a state prisoner. In the initial review order the court dismissed the petition with leave to amend. In that order the court stated:

The petition is a handwritten document not on the court's form for habeas petitions. It is labeled a "[n]ominal" petition, apparently because it is not the real petition, but rather a place-holder for an amended petition petitioner hopes to file later. It includes two "motions to the court" and eight "ancillary" motions. Petitioner refers to it as presenting a "sampling" of the issues he ultimately will raise. He lists twelve claims, some with subparts. Although some of these claims clearly are cognizable, for instance ineffective assistance of counsel claims, most do not allege grounds for federal habeas relief.

[Paragraph omitted]

Because the present petition omits necessary information, is incomplete, and does not contain a simple, clear list of the constitutional claims petitioner wishes to raise, it will be dismissed with leave to amend on the court's form. If petitioner chooses to amend he may use additional sheets of paper to set out claims beyond those which will fit on the form, but is advised to omit unnecessary argument which might be better presented in a memorandum in support of the petition or in a traverse, and to focus on the federal legal claims he wishes to be considered, rather than extensive discussion of his factual assertions. [Footnote omitted] Because claims cannot be raised in federal court unless they have first been raised to the highest state court available in explicitly federal terms, it should not be difficult for petitioner to list the federal issues he has already presented to the state supreme court.

After many motions for extensions of time, petitioner has filed an amended petition and a "Motion to Amend First Amended Petition[;] Expedite Review[;] Bifurcate Review."

DISCUSSION

I. Motion to Amend, Expedite and Bifurcate

Although petitioner labels his motion as being in part a motion to amend, and briefly refers to amending on page four of the motion, it appears that in fact all of the grounds for this motion are essentially the same: He wants the court to decide claims one through four of the First Amended Complaint quickly, because he believes that those claims can be decided without his having access to certain legal papers he contends have been wrongly taken from him. If so, it is unnecessary to amend. Furthermore, although because of a very heavy caseload it takes longer than the court would like to decide cases, in this case much of the delay is due to petitioner's insistence on filing masses of papers, his requests for continuances, and his unwillingness to concisely state his claims. The motion to amend, expedite and bifurcate will be denied. The case will be decided in its proper order.

II. Review of First Amended Petition

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 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 which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 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). "Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,

1 concurring).

2 **B. Legal Claims**

3 As grounds for federal habeas relief, petitioner asserts that: (1) an alleged
4 campaign by CDCR employees to prevent him from having access to his legal papers
5 shows that his “conviction appeal” claims are valid and is a basis for the grant of habeas
6 relief; (2) he is entitled to an automatic “reversal” of his conviction because CDCR
7 prevented two habeas petitions from reaching the California Supreme Court; (3) CDCR
8 employees seized his state habeas petitions in 2003, which petitions would have
9 succeeded, so if this court were to grant a retrial rather than release that would be a double
10 jeopardy violation; (4) this court should grant the writ unconditionally, without permission to
11 retry him, because of CDCR misconduct; (5) his petition will “destroy the evidentiary value
12 of petitioner’s locker contents,” so there will be insufficient evidence to support the
13 conviction and he cannot be retried; (6) the judge, prosecutor and defense counsel
14 conspired to hide from him information about a juror, and excluded him from being present
15 at a bench conference with a juror who had written the court a note; (7) the trial judge was
16 part of a conspiracy against him, and was a friend of his enemies, so was not unbiased; (8)
17 his trial was part of a criminal conspiracy; (9) the prosecutor was guilty of misconduct,
18 including subverting defense counsel to the extent that defense counsel was ineffective;
19 (10) the prosecutor committed misconduct in the course of obtaining a search warrant; (11)
20 the prosecutor committed misconduct by taking opposing positions in the grand jury and at
21 trial, and his counsel was ineffective in not attacking the prosecutor’s use of evidence of
22 petitioner’s exclamation when police knocked on his door; (12) his speedy trial rights were
23 violated; (13) the prosecutor committed misconduct by concealing evidence of witnesses’
24 mental illness; (14) a juror committed misconduct; (15) his counsel was ineffective in
25 specified ways; (16) his counsel was ineffective in failing to properly investigate, including
26 failing to use discovery effectively; (17) counsel conceded his ineffective assistance; (18)
27 counsel’s motion for a new trial was so defective as to constitute ineffective assistance;
28 (19) counsel’s failure to return files post-trial constituted ineffective assistance.

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1 and serve on respondent an opposition or statement of non-opposition within thirty days of
2 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
3 within fifteen days of receipt of any opposition.

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

10 **IT IS SO ORDERED.**

11 Dated: September 30, 2008.



PHYLLIS J. HAMILTON
United States District Judge