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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SCOTT BURNS,

Petitioner,

No. C 08-0163 PJH (PR)

vs.

**ORDER TO SHOW CAUSE**

B. CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. See 28 U.S.C. § 2241(d).

**BACKGROUND**

Petitioner was convicted of second degree murder in 1988. He received a sentence of seventeen years to life in prison. He alleges that he has exhausted these parole claims by way of state habeas petitions.

**DISCUSSION**

**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

United States District Court  
For the Northern District of California

1 application for a federal writ of habeas corpus filed by a prisoner who is in state custody  
2 pursuant to a judgment of a state court must “specify all the grounds for relief which are  
3 available to the petitioner ... and shall set forth in summary form the facts supporting each  
4 of the grounds thus specified.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C.  
5 foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts  
6 that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes  
7 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which  
8 appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon*  
9 *v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,  
10 concurring).

## 11 **B. Legal Claims**

12 As grounds for federal habeas relief, petitioner asserts that: (1) the circumstances of  
13 his crime did not constitute “some evidence” to support the September 29, 2005, denial of  
14 parole; (2) the Board’s conclusion that the motive for the crime was “inexplicable and very  
15 trivial” was contradictory, in that it could not be both, nor did the Board say what the motive  
16 was or discuss it, rendering the denial arbitrary and a violation of due process; (3) the  
17 Board’s statement that he had been convicted of robbery prior to the commitment offense  
18 was not supported by any evidence and was false, so reliance on that factor as a ground  
19 for denying parole violated due process; (4) there was no evidence to support the Board’s  
20 finding that petitioner had an unstable social history; (5) there was no evidence to support  
21 the Board’s conclusion that petitioner had not participated in enough self-help and therapy  
22 programs; (6) the notations of minor offenses (CDC 128’s) (“chronos”), the last in 2003, and  
23 his rule violation reports, the last in 2002, were not “some evidence” to support denial of  
24 parole; (7) the Board’s requirement that he engage in additional “self-help” and therapy,  
25 when none is available to petitioner and there is no evidence in the record that petitioner  
26 needs it, was arbitrary and capricious; (8) it was a violation of due process for the Board to  
27 give petitioner a multi-year denial, as California law does not allow a multi-year denial in his  
28 circumstances; (9) his counsel at the parole hearing was ineffective; and (10) the Board is

1 precluded from relying on the same facts to deny parole at every hearing. These claims  
2 are sufficient to require a response. See *Biggs v. Terhune*, 334 F.3d 910, 916-17 (9th Cir.  
3 2003) (warning that repeated denial of parole based on unchanging characteristics of  
4 offense might violate due process); *McQuillion v. Duncan*, 306 F.3d 895, 904 (9th Cir.  
5 2002) (due process requires that at least “some evidence” support parole denial).

6 **CONCLUSION**

7 For the foregoing reasons and for good cause shown,

8 1. The clerk shall serve by certified mail a copy of this order and the petition and all  
9 attachments thereto on respondent and respondent's attorney, the Attorney General of the  
10 State of California. The clerk also shall serve a copy of this order on petitioner.

11 3. Respondent shall file with the court and serve on petitioner, within sixty days of  
12 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
13 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
14 granted. Respondent shall file with the answer and serve on petitioner a copy of all  
15 portions of the state trial record that have been transcribed previously and that are relevant  
16 to a determination of the issues presented by the petition.

17 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
18 the court and serving it on respondent within thirty days of his receipt of the answer.

19 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
20 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
21 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court  
22 and serve on respondent an opposition or statement of non-opposition within thirty days of  
23 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
24 within fifteen days of receipt of any opposition.

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. Petitioner  
27 must keep the court informed of any change of address and must comply with the court's  
28 orders in a timely fashion. Failure to do so may result in the dismissal of this action for

1 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*  
2 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

3 **IT IS SO ORDERED.**

4 Dated: February 6, 2007.



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PHYLLIS J. HAMILTON  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SCOTT BURNS,

Petitioner,

v.

B. CURRY,

Respondent.

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Case Number: CV08-00163 PJH

**CERTIFICATE OF SERVICE**

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 February 6, 2008, 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.

Scott Burns D-99247  
Correctional Training Facility  
P.O. Box 689  
Soledad, CA 93960-0689

Dated: February 6, 2008



Richard W. Wieking, Clerk  
By: Nichole Heurman, Deputy Clerk