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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GILBERT DANIEL YLIZ,

Petitioner,

No. C 08-4419 PJH (PR)

vs.

**ORDER TO SHOW CAUSE**

ANTHONY HEDGPETH, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at Kern Valley State Prison, 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.

Venue is proper because the conviction was obtained in Santa Cruz County, which is in this district. See 28 U.S.C. § 2241(d).

**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 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.

1 foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts  
2 that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes  
3 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which  
4 appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon*  
5 *v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,  
6 concurring).

7 **B. Legal Claims**

8 Defendant was convicted by jury trial of three counts of forcible sexual penetration,  
9 see Cal. Penal Code § 289(a)(1); one count of forcible oral copulation, see Cal. Penal Code  
10 § 288a(c)(2); and one count of misdemeanor trespassing, see Cal. Penal Code  
11 § 602.5. The trial court committed him to state prison for a term of twenty-four years.

12 As grounds for federal habeas relief, petitioner asserts that his Sixth and Fourteenth  
13 Amendment right to put on a defense was violated when the trial court would not allow him  
14 to introduce inconsistent out-of-court statements by the victim. This claim is sufficient to  
15 require a response.

16 **CONCLUSION**

17 For the foregoing reasons and for good cause shown,

18 1. The clerk shall serve by regular mail a copy of this order and the petition and all  
19 attachments thereto on respondent and respondent's attorney, the Attorney General of the  
20 State of California. The clerk also shall serve a copy of this order on petitioner.

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


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

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

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

13           **IT IS SO ORDERED.**

14 Dated: September 26, 2008.

  
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PHYLLIS J. HAMILTON  
United States District Judge