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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN MANUEL CHAVEZ,

Petitioner,

No. C 08-4688 PJH (PR)

vs.

ORDER TO SHOW CAUSE

BEN 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

In 1993 petitioner was convicted of second degree murder and was sentenced to prison for fifteen years to life. This petition is directed to a denial of parole on April 12, 2006. He claims to have exhausted these 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

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) There was not “some
13 evidence” that he would be a risk to public safety if released now; (2) his due process rights
14 were denied when the Board denied parole based on the unchanging circumstances of his
15 crime; (2) the denial of parole makes his sentence the equivalent of a first degree murder
16 life sentence, breaching the plea bargain, and the prosecutor has breached the plea
17 agreement by arguing for continued incarceration; (3) the presence of an Assistant District
18 Attorney at the hearing to oppose release violated implied terms of the plea agreement; (4)
19 he should have been released because he had been confined beyond his maximum eligible
20 parole date; (5) the indeterminate life term conflicts with his right to sentence credits for
21 time served pre-conviction; (6) the Board’s use of police reports to determine facts violated
22 his Sixth Amendment right to confrontation; (7) the Board failed to apply the sentence
23 “matrix” to him; (8) his counsel was ineffective in advising him to take the plea offer; (9) his
24 Sixth Amendment right to trial by jury was violated by the Board’s making factual findings
25 that in effect found him guilty of a greater offense than that to which he pled guilty; and (10)
26 the Board’s conclusion that he would be a risk to society if paroled conflicts with the
27 CDCR’s decision to house him in a facility for nonviolent inmates.

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1 Issues five, seven and ten present only state-law claims, and thus cannot be
2 considered in this proceeding, see *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (federal
3 habeas unavailable for violations of state law or for alleged error in the interpretation
4 or application of state law), and issue eight goes to petitioner's conviction, not the parole
5 denial, and thus must be raised in a separate petition. These claims will be dismissed.
6 The other claims are sufficient to require a response.

7 **CONCLUSION**

8 For the foregoing reasons and for good cause shown,

9 1. Issues five, seven, eight and ten are **DISMISSED**.

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

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

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

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

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

1 must keep the court informed of any change of address and must comply with the court's
2 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
3 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*
4 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

5 **IT IS SO ORDERED.**

6 Dated: November 5, 2008.



PHYLLIS J. HAMILTON
United States District Judge

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