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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THERON N. LYNCH,

Petitioner,

No. C 10-2819 PJH (PR)

vs.

ORDER TO SHOW CAUSE

JAMES A. HARTLEY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at Avenal 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.

Petitioner was convicted in Alameda County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d).

BACKGROUND

In his petition, petitioner says that he pleaded guilty to oral copulation, assault with a deadly weapon, and use of a firearm. He was sentenced to prison for fourteen years.

Petitioner says that he was denied leave to file a direct appeal by the California Court of Appeal. He contends, however, that he was 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. §

1 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet
2 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An
3 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
4 pursuant to a judgment of a state court must “specify all the grounds for relief which are
5 available to the petitioner ... and shall set forth in summary form the facts supporting each
6 of the grounds thus specified.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C.
7 foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts
8 that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes
9 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which
10 appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon*
11 *v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,
12 concurring).

13 **B. Legal Claims**

14 As grounds for federal habeas relief, petitioner asserts that: (1) the sentence he is
15 serving is inconsistent with the sentence as orally pronounced by the sentencing court; (2)
16 he is actually innocent; and (3) his counsel was ineffective in advising him to pled guilty.
17 These contentions are sufficient to require a response.

18 **CONCLUSION**

19 For the foregoing reasons and for good cause shown,

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

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

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

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

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

15 **IT IS SO ORDERED.**

16 Dated: April 20, 2011.



PHYLLIS J. HAMILTON
United States District Judge