

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JUAN MENDEZ,

Petitioner,

No. C 10-5555 PJH (PR)

vs.

ORDER TO SHOW CAUSE

MARTIN D. BITER, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at Kern Valley State Prison in Delano, 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 Monterey County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d).

BACKGROUND

A Monterey County jury convicted petitioner of six counts of assault by means likely to produce great bodily injury, see Cal. Penal Code § 245(a)(1); two counts of dissuading a witness by force or threat, see *id.* at § 136.1(c)(1); one count of aggravated trespass, see *id.* at § 602.5(b); three counts of violating a protective order, see *id.* at § 273.6(a); one count of attempted premeditated murder, see *id.* at §§ 664, 187(a); one count of threat of violence see *id.* at § 422; and one count of battery on a cohabitant, see *id.* at § 243(e)(1). He was sentenced to fourteen years in prison.

The judgment was affirmed on direct appeal by the California Court of Appeal, and the Supreme Court of California denied review. Petitioner's subsequent state habeas petitions raising some of the issues he presents here were also denied.

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. 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., concurring).

B. Legal Claims

As grounds for federal habeas relief, petitioner asserts that: (1) the trial court's exclusion of testimony from two witnesses violated his right to present a defense; (2) there was improper contact between a juror and an investigator for the defense, causing him to compromise his trial tactics; (3) incomplete and inaccurate trial transcripts resulted in a violation of his right to due process on appeal; and (4) his trial and appellate counsel were ineffective. These claims are sufficient to require a response.

CONCLUSION

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

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

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

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

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

IT IS SO ORDERED.

Dated: October 17, 2011.


PHYLLIS J. HAMILTON
United States District Judge