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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARK A. PORRAS,
Petitioner,
vs.
G. D. LEWIS, Warden,
Respondent.

No. C 12-3005 PJH (PR)
**ORDER FOR RESPONDENT
TO SHOW CAUSE**

Petitioner, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the filing fee.

BACKGROUND

Petitioner challenges the retroactive application of changes in California Penal Code section 2933.6 to him. Effective January 25, 2010, section 2933.6 was changed to provide that validated gang members or associates are ineligible to earn credits off their sentence while housed in a Secured Housing Unit (SHU), Psychiatric Services Unit (PSU) or Administrative Segregation Unit (ASG).

Petitioner unsuccessfully sought relief from the state courts until the Supreme Court of California denied his final state petition on March 28, 2012.

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 available to
5 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules
6 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the
7 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”
8 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
9 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject
10 to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102,
11 1108 (9th Cir. 1996) (Schroeder, J., concurring).

12 **B. Legal Claims**

13 The Ex Post Facto Clause forbids the states from statutorily cancelling time credits
14 and making ineligible for early release any prisoner who was previously eligible. See *Lynce*
15 *v. Mathis*, 519 U.S. 433, 437-39, 447-49 (1997) (retroactive cancellation of prison credits
16 has impermissible effect of lengthening period of incarceration in violation of Ex Post Facto
17 Clause). Liberally construed, petitioner's ex post facto claim appears cognizable under §
18 2254 and merits an answer from respondent. See *Zichko v. Idaho*, 247 F.3d 1015, 1020
19 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus
20 liberally).

21 **CONCLUSION**

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

25 2. Respondent shall file with the court and serve on petitioner, within sixty days of
26 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
27 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
28 granted. Respondent shall file with the answer and serve on petitioner a copy of all

1 portions of the state trial record that have been transcribed previously and that are relevant
2 to a determination of the issues presented by the petition.

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

5 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
6 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
7 Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the
8 date this order is entered. If a motion is filed, petitioner shall file with the court and serve
9 on respondent an opposition or statement of non-opposition within twenty-eight (28) days of
10 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
11 within fourteen days of receipt of any opposition.

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

18 **IT IS SO ORDERED.**

19 Dated: August 7, 2012.



PHYLLIS J. HAMILTON
United States District Judge

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