

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER HONESTO,)	No. C 06-00308 JF (PR)
)	
Petitioner,)	ORDER REOPENING HABEAS
)	ACTION; TO SHOW CAUSE
v.)	
)	
D. G. ADAMS, Warden)	
)	
Respondent.)	
_____)	

Petitioner, a California prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court granted Petitioner’s motion to stay the action to exhaust additional claims in the state courts on June 12, 2007. Petitioner was directed to notify the Court within thirty days of the California Supreme Court’s decision denying him relief to reopen this action. Petitioner has filed notice that he has exhausted his claims in the state court. (Docket No. 13.) Accordingly, the Court will reopen the instant case. The clerk shall REOPEN the file. The Court will proceed with an initial review of the amended petition.

BACKGROUND

According to the amended petition, Petitioner pleaded no contest in 1987 to second degree murder in Santa Clara County Superior Court, under the terms of a plea agreement.

1 The terms of his sentence under the plea agreement are not clear. Petitioner filed state
2 habeas petitions in the state courts which were denied. Petitioner initiated the instant federal
3 habeas proceedings on January 17, 2006.

4
5 **DISCUSSION**

6 **A. Standard of Review**

7 This Court may entertain a petition for writ of habeas corpus “in behalf of a person in
8 custody pursuant to the judgment of a state court only on the ground that he is in custody in
9 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
10 Rose v. Hodges, 423 U.S. 19, 21 (1975).

11 A district court shall “award the writ or issue an order directing the respondent to
12 show cause why the writ should not be granted, unless it appears from the application that the
13 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 **B. Petitioner’s Claims**

15 Petitioner alleges the following claims as grounds for federal habeas relief: 1) the no
16 contest plea to second degree murder is invalid because it was not knowingly and voluntarily
17 made; 2) the Parole Board’s decision to deny parole violated the terms of the plea agreement;
18 3) Petitioner was denied his right to counsel at an interview with a probation officer during
19 state trial proceedings; 4) Petitioner was denied his right to counsel during interviews for a
20 psychiatric report and board report in preparation of a July 2008 parole consideration
21 hearing; 5) the Parole Board violated due process when it based its decision to deny parole on
22 information which was not proven true by a jury; 6) California Penal Code § 3041(a)(b) and
23 California Code of Regulations § 2402 are unconstitutional on their face; 7) California Penal
24 Code § 3041(a)(b) and California Code of Regulations § 2402 are unconstitutional as
25 applied; 8) the Parole Board and Governor have adopted an unconstitutional blanket, no
26 parole policy that violates due process; and 9) California Penal Code § 3041(a)(b) is “void
27 for uncertainty,” (Pet. 31). Liberally construed, these claims are cognizable under § 2254.

1 The Court orders Respondent to show cause why the petition for a writ of habeas corpus
2 should not be granted.

3

4

CONCLUSION

5 1. The Clerk shall serve by mail a copy of this order and the **amended petition**
6 **and supplemental pleading** (Docket Nos. 13 & 15), and all attachments thereto upon the
7 Respondent and the Respondent’s attorney, the Attorney General of the State of California.
8 The Clerk shall also serve a copy of this order on the Petitioner.

9 2. Respondent shall file with the Court and serve on Petitioner, **within ninety**
10 **(90) days** of the date this order is filed, an answer conforming in all respects to Rule 5 of the
11 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
12 be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
13 portions of the state parole record that have been transcribed previously and that are relevant
14 to a determination of the issues presented by the petition.

15 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with
16 the Court and serving it on Respondent **within thirty (30) days** of that the answer is filed.

17 3. Alternatively, Respondent may, within **ninety (90) days** of the date this order
18 is filed, file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the
19 Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
20 Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent
21 an opposition or statement of non-opposition **within thirty (30) days** of the date the motion
22 is filed, and Respondent shall file with the court and serve on Petitioner a reply **within**
23 **fifteen (15) days** of the date any opposition is filed.

24 4. It is Petitioner’s responsibility to prosecute this case. Petitioner is reminded
25 that all communications with the Court must be served on respondent by mailing a true copy
26 of the document to Respondent’s counsel. Petitioner must keep the Court and all parties
27 informed of any change of address by filing a separate paper captioned “Notice of Change of
28

1 Address.” He must comply with the Court’s orders in a timely fashion. Failure to do so may
2 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
3 Procedure 41(b).

4 IT IS SO ORDERED.

5 DATED: 5/22/09


6 JEREMY FOGEL
United States District Judge

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PETER HONESTO,

Petitioner,

v.

D. G. ADAMS, Warden,

Respondent.

Case Number: CV06-00308 JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 5/29/09, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Peter Honesto D-55459
CA State Prison-Avenal
P.O. Box 9
G4-18up
Avenal, CA 93204

Dated: 5/29/09

Richard W. Wieking, Clerk