

\*\*Original filed 4/24/07\*\*

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NOT FOR CITATION  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

TIMOTHY BUSCH,	)	No. C 06-6271 JF (PR)
	)	
Petitioner,	)	PARTIAL DISMISSAL ORDER;
	)	ORDER TO SHOW CAUSE
vs.	)	
	)	
A.P. KANE,	)	
	)	
Respondent.	)	

Petitioner, a state prisoner proceeding pro se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the Board of Prison Terms (“Board’s”) decision denying him parole. The Court initially dismissed this action for failure to pay the filing fee. Thereafter, the Court granted Petitioner’s motion for reconsideration and reopened the case. The Court will dismiss claim four and order Respondent to show cause why the petition should not be granted as to the remaining claims.

**BACKGROUND**

In 1989, a San Diego Superior Court jury convicted Petitioner of second degree murder (Cal. Penal Code § 187). Petitioner was sentenced to a term of fifteen years-to-life in state prison. Petitioner challenges the Board of Prison Terms’ decision denying

1 him parole. Petitioner filed three state habeas petitions in the state superior court, state  
2 appellate court and state supreme court, all of which were denied as of August 23, 2006.  
3 Petitioner filed the instant federal habeas petition on October 4, 2006.

#### 4 **DISCUSSION**

##### 5 A. Standard of Review

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

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

##### 13 B. Petitioner’s Claims

14 As grounds for federal habeas relief, Petitioner alleges: (1) his liberty interest and  
15 right to due process were violated when parole was denied without the requisite reliable  
16 evidence; (2) the Board and the Governor have an illegal anti-parole policy in violation of  
17 his liberty interest and right to due process; (3) his liberty interest and due process were  
18 violated when the Board did not comply with the law; and (4) his First Amendment right  
19 to access the courts for redress of grievances was denied where the state courts refused to  
20 acknowledge and respond to all submitted grounds. See Petition at 6-6a.

21 Claim four is not cognizable under § 2254 because errors in the state post-  
22 conviction review process are not addressable through federal habeas corpus proceedings.  
23 See Ortiz v. Stewart, 149 F.3d 923, 939 (9th Cir. 1998); Gerlaugh v. Stewart, 129 F.3d  
24 1027, 1045 (9th Cir. 1997); Villafuerte v. Stewart, 111 F.3d 616, 632 n.7 (9th Cir. 1997);  
25 Franzen v. Brinkman, 877 F.2d 26, 26 (9th Cir.), cert. denied, 493 U.S. 1012 (1989).

26 Such errors do not generally represent an attack on the prisoner’s detention and therefore  
27 are not proper grounds for habeas relief. See id. They instead generally pertain to the  
28 review process itself and not to the constitutionality of a state conviction.



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

7 5. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
8 that all communications with the Court must be served on respondent by mailing a true  
9 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
10 parties informed of any change of address by filing a separate paper captioned "Notice of  
11 Change of Address." He must comply with the Court's orders in a timely fashion.  
12 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
13 to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

15 Dated: 4/24/07

  
JEREMY FOGEL  
United States District Judge

1 A copy of this order was mailed to the following:

2 Timothy Busch  
3 E-14667  
4 Correctional Training Facility  
5 P.O. Box 689  
6 Soledad, CA 93960-0689

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