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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTOR LOPEZ,)	No. C 08-05341 JW (PR)
Petitioner,)	ORDER TO SHOW CAUSE
vs.)	
ROBERT AYERS, JR., Warden,)	
Respondent.)	
_____)	

Petitioner, an inmate at San Quentin State Prison (“SQSP”) proceeding pro se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the decision of the Board of Parole Hearings (the “Board”) to deny parole. Petitioner has paid the filing fee.

BACKGROUND

According to the petition, petitioner was found guilty by a jury in Los Angeles County Superior Court of kidnap for robbery, armed with a firearm and possession of marijuana and was sentenced to a term of seven years-to-life in state prison in 1989. On May 3, 2007, the Board found petitioner unsuitable for parole after a parole suitability hearing. Petitioner challenged the Board’s decision and

1 filed habeas petitions in the state courts. The California Supreme Court denied the
2 petition on November 12, 2008. Petitioner filed the instant federal petition on
3 November 25, 2008.

4 5 DISCUSSION

6 **A. Standard of Review**

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

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

15 **B. Petitioner’s Claims**

16 Petitioner seeks federal habeas corpus relief from the Board’s May 3, 2007
17 decision finding him not suitable for parole on the grounds that: (1) the Board’s
18 decision violates due process because it was not supported by some evidence, (Pet.
19 9); (2) the Board used unconstitutionally vague terms when it found the commitment
20 offense was “very cruel and callous,” (id. at 15); (3) the Board violated due process
21 when it failed to “balance the cruelty and callousness of the commitment offense
22 against the passage of time and other factors,” (id. at 12); (4) there is no nexus
23 between the commitment offense and petitioner’s present dangerousness; and (5) the
24 Board’s reasoning that the commitment offense was carried out in a way that
25 “mental anguish was inflicted upon the victim” was unconstitutionally vague and
26 violated due process, (id. at 32). Liberally construed, petitioner’s claims appear
27 cognizable under § 2254 and merit an answer from respondent. See Biggs v.
28 Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (finding that initial refusal to set

1 parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest
2 in release on parole which cannot be denied without adequate procedural due
3 process protections).

4
5 **CONCLUSION**

6 For the foregoing reasons and for good cause shown,

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

11 2. Respondent shall file with the court and serve on petitioner, within
12 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
13 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
14 habeas corpus should not be issued. Respondent shall file with the answer and serve
15 on petitioner a copy of all portions of the state trial record that have been transcribed
16 previously and that are relevant to a determination of the issues presented by the
17 petition.

18 If petitioner wishes to respond to the answer, he shall do so by filing a
19 traverse with the court and serving it on respondent within **thirty (30) days** of his
20 receipt of the answer.

21 3. Respondent may file a motion to dismiss on procedural grounds in lieu
22 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
23 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall
24 file with the court and serve on respondent an opposition or statement of non-
25 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file
26 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of
27 any opposition.

28 4. Petitioner is reminded that all communications with the court must be

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served on respondent by mailing a true copy of the document to respondent's
counsel. Petitioner must also keep the court and all parties informed of any change
of address.

DATED: April 22, 2009



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VICTOR LOPEZ,

Petitioner,

v.

ROBERT AYERS, JR., Warden,

Respondent.

Case Number: CV08-05341 JW

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 April 29, 2009, 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.

Victor Lopez H-70404
San Quentin State Prison
San Quentin, Ca 94974

Dated: April 29, 2009

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk