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NOT FOR CITATION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

DAVID A. MARSHALL,)	No. C 09-00061 JF (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE
)	
vs.)	
)	
ROBERT L. AYERS, JR., Warden,)	
)	
Respondent.)	

Petitioner, a state prisoner currently incarcerated at the San Quentin State Prison (“SQSP”), seeks petition in pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the 2006 denial of parole by the Board of Parole Hearings (“BPH”). Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.

STATEMENT

In 1982, Petitioner was sentenced to a term of 25 years to life in state prison after being found guilty by a jury of first degree murder and use of a deadly weapon. The BPH found Petitioner unsuitable for parole after a parole suitability hearing on October 3, 2006. (Pet. 1.) Petitioner sought habeas relief in the state superior court, state appellate

1 court, and state supreme court, all of which were denied. Thereafter, Petitioner filed the
2 instant federal petition on January 7, 2009.

3 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 that the BPH’s decision
15 denying parole violated his right to due process because 1) the decision was not supported
16 by “some evidence”; 2) the BPH was maintaining a “no parole policy denying parole to
17 [almost] all indeterminately sentenced prisoners,” which denied Petitioner a fair and
18 impartial hearing, (Pet.8); and 3) the state superior court decision was an “unreasonable
19 determination of state and federal law” and an “unreasonable determination of the facts,”
20 (Pet. 10). Liberally construed, Petitioner’s claims are cognizable under § 2254. The
21 Court orders Respondent to show cause why the petition for a writ of habeas corpus
22 should not be granted.

23 24 **CONCLUSION**

25 1. The Clerk shall serve by mail a copy of this order and the petition
26 and all attachments thereto upon the Respondent and the Respondent’s attorney, the
27 Attorney General of the State of California. The Clerk shall also serve a copy of this
28 order on the Petitioner.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DAVID A MARSHALL,
Petitioner,

Case Number: CV09-00061 JF

CERTIFICATE OF SERVICE

v.

ROBERT L. AYERS, JR., Warden,
Respondent.

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 5/19/09, 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.

David A. Marshall C-47860
San Quentin State Prison
San Quentin, CA 94964

Dated: 5/19/09

Richard W. Wieking, Clerk