

United States District Court

For the Northern District of California

GARY LEE HICKS,) No. C 10-00822 JW (PR)
Petitioner,)
vs.) ORDER TO SHOW CAUSE
R. GROUNDS, Warden,)
Respondent.)

Petitioner, a California inmate at the Correctional Training Facility in Soledad proceeding pro se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the 2008 decision by the Board of Parole Hearings (the “Board”) finding petitioner unsuitable for parole. Petitioner has paid the filing fee.

BACKGROUND

According to the petition, petitioner was convicted by a jury in Monterey County Superior Court of second degree murder. Petitioner was sentenced to a term of 15 years-to-life in state prison on 1983. On August 7, 2008, the Board found petitioner unsuitable for parole after his sixth parole consideration hearing. Petitioner challenged

1 the Board's decision by filing habeas petitions in the state courts. Petitioner has
2 attached state court opinions of the superior and appellate courts to his petition, but it is
3 unclear whether he exhausted his remedies with the state high court. Petitioner filed the
4 instant federal petition on February 26, 2010.

5

6 DISCUSSION

7 A. Standard of Review

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

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

15 B. Petitioner's Claims

16 Petitioner seeks federal habeas corpus relief from the Board's August 7, 2008
17 decision finding him unsuitable for parole on the grounds there is no evidence to
18 support the Board's decision. Liberally construed, petitioner's claim appears
19 cognizable under § 2254 and merits an answer from respondent.

20

21 CONCLUSION

22 For the foregoing reasons and for good cause shown,

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

27 2. Respondent shall file with the court and serve on petitioner, within **sixty**
28 **(60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of

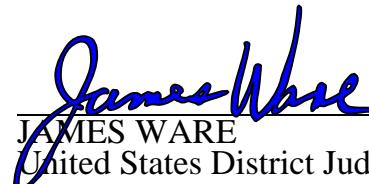
1 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
2 should not be issued. Respondent shall file with the answer and serve on petitioner a
3 copy of all portions of the state trial record that have been transcribed previously and
4 that are relevant to a determination of the issues presented by the petition.

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

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

14 4. Petitioner is reminded that all communications with the court must be
15 served on respondent by mailing a true copy of the document to respondent's counsel.
16 Petitioner must also keep the court and all parties informed of any change
17 of address.

18
19 DATED: April 27, 2010


JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GARY L. HICKS,
Petitioner,
v.
R. GROUNDS, Warden,
Respondent.

Case Number: CV10-00822 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 4/29/2010, 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.

Gary Lee Hicks C-73540
CTF - Correctional Training Facility
P. O. Box 689
Soledad, CA 93960

Dated: 4/29/2010

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