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

ALLEN KIRK WARE,)
)
 Petitioner,)
)
 vs.)
)
 WARDEN KEVIN CHAPPELLE,)
)
 Respondent.)
 _____)

No. C 12-4082 LHK (PR)

ORDER GRANTING MOTION FOR
LEAVE TO PROCEED IN FORMA
PAUPERIS; DENYING MOTION
FOR EVIDENTIARY HEARING;
ORDER TO SHOW CAUSE

(Docket Nos. 2, 3)

Petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging California statutes relating to parole suitability. Petitioner’s motion for leave to proceed in forma pauperis is GRANTED. Petitioner’s motion for an evidentiary hearing is DENIED without prejudice. The Court orders Respondent to show cause why a writ of habeas corpus should not be granted.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose*

1 v. *Hodges*, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an order
2 directing the respondent to show cause why the writ should not be granted, unless it appears
3 from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. §
4 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or
5 conclusory, palpably incredible, or patently frivolous or false. See *Hendricks v. Vasquez*, 908
6 F.2d 490, 491 (9th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

7 B. Petitioner’s Claim

8 Petitioner alleges that he was sentenced under the indeterminate sentencing law prior to
9 July 1, 1977. On some unspecified date, although he was found suitable for parole, his parole
10 release date was later rescinded. Petitioner alleges that he is being forced to attend parole
11 suitability hearings even though he has already completed the parole process. Petitioner claims
12 that California Penal Code § 3041.5 violates his right against ex post facto laws and his right
13 against cruel and unusual punishment. Liberally construed, these claims are cognizable for
14 federal habeas review. The Court orders Respondent to show cause why the petition should not
15 be granted as to the above issues.

16 **CONCLUSION**

17 1. The Clerk shall serve by mail a copy of this order and the petition (docket no. 1)
18 and all attachments thereto upon the Respondent and the Respondent’s attorney, the Attorney
19 General of the State of California. The Clerk shall also serve a copy of this order on Petitioner.

20 2. Respondent shall file with the Court and serve on Petitioner, within **sixty days** of
21 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
22 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.

23 Respondent shall file with the answer and serve on Petitioner a copy of all portions of the
24 underlying state criminal record that have been transcribed previously and that are relevant to a
25 determination of the issues presented by the petition. If Petitioner wishes to respond to the
26 answer, he shall do so by filing a traverse with the Court and serving it on Respondent within
27 **thirty days** of the date the answer is filed.

