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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

BENNIE LEE MATHIS,

Petitioner,

v.

ROBERT DOYLE,

Respondent.

Civil No. 10-2287 MMA (JMA)

ORDER:

- (1) CONSTRUING ACTION PURSUANT TO 28 U.S.C. §2254,**
- (2) GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS and**
- (3) DISMISSING CASE WITHOUT PREJUDICE**

Presently before the Court is Bennie Lee Mathis’ (“Petitioner”) petition for writ of habeas corpus. Although Petitioner filed this action pursuant to 28 U.S.C. § 2241, he is a state prisoner attacking the validity of a state court conviction and sentence imposed by the state of California. Therefore, Petitioner may not proceed under section 2241, but may only proceed with a habeas action in federal court under 28 U.S.C. § 2254. *White v. Lambert*, 370 F.3d 1002, 1006-07 (9th Cir. 2004) (holding that section 2254 is the proper jurisdictional basis for a habeas petition brought by an individual “in custody pursuant to a state court judgment”). The Court therefore, will construe this action as one brought pursuant to 28 U.S.C. § 2254.

APPLICATION TO PROCEED IN FORMA PAUPERIS

Petitioner has also filed a request to proceed in forma pauperis. Petitioner has \$0.00 on account at the California correctional institution in which he is presently confined and cannot

1 afford the \$5.00 filing fee. Thus, the Court **GRANTS** Petitioner’s application to proceed in
2 forma pauperis, and allows Petitioner to prosecute the above-referenced action as a poor person
3 without being required to prepay fees or costs and without being required to post security. The
4 Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the
5 filing fee.

6 **FAILURE TO NAME PROPER RESPONDENT**

7 The Petition must be dismissed, however, because review of the Petition reveals that
8 Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner must name
9 the state officer having custody of him as the respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d
10 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Federal courts lack personal
11 jurisdiction when a habeas petition fails to name a proper respondent. *See id.*

12 The warden is the typical respondent. However, “the rules following section 2254 do not
13 specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the
14 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal
15 institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a
16 petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall
17 be the state officer who has official custody of the petitioner (for example, the warden of the
18 prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

19 A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of]
20 habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The
21 actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v.*
22 *Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of
23 habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the
24 body” if directed to do so by the Court. “Both the warden of a California prison and the Director
25 of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d
26 at 895.

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1 Here, Petitioner has incorrectly named “Robert Doyle,” as Respondent. In order for this
2 Court to entertain the Petition filed in this action, Petitioner must name the warden in charge of
3 the state correctional facility in which Petitioner is presently confined or the Director of the
4 California Department of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir.
5 1992) (per curiam).

6 **FAILURE TO STATE GROUNDS FOR RELIEF IN PETITION**

7 In addition, Rule 2(c) of the Rules Governing Section 2254 Cases states that the petition
8 “shall set forth in summary form the facts supporting each of the grounds . . . specified [in the
9 petition].” Rule 2(c), 28 U.S.C. foll. § 2254. *See also Boehme v. Maxwell*, 423 F.2d 1056, 1058
10 (9th Cir. 1970) (trial court’s dismissal of federal habeas proceeding affirmed where petitioner
11 made conclusory allegations instead of factual allegations showing that he was entitled to relief).
12 Here, Petitioner has violated Rule 2(c). Although Petitioner does not fail to state generalized
13 constitutional grounds for relief, he does fail to provide specific factual allegations in support
14 of such grounds.

15 While courts should liberally interpret pro se pleadings with leniency and understanding,
16 this should not place on the reviewing court the entire onus of ferreting out grounds for relief.
17 *Zichko v. Idaho*, 247 F.3d 1015, 1020-21 (9th Cir. 2001). This Court would have to engage in a
18 tenuous analysis in order to attempt to identify and make sense of the Petition and its numerous
19 attachments. In order to satisfy Rule 2(c), Petitioner must point to a “real possibility of
20 constitutional error.” *Cf. Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977) (internal quotation
21 marks omitted). Facts must be stated, in the petition, with sufficient detail to enable the Court
22 to determine, from the face of the petition, whether further habeas corpus review is warranted.
23 *Adams v. Armontrout*, 897 F.2d 332, 334 (8th Cir. 1990). Moreover, the allegations should be
24 sufficiently specific to permit the respondent to assert appropriate objections and defenses.
25 *Harris v. Allen*, 739 F. Supp. 564, 565 (W.D. Okla. 1989). Here, the lack of grounds for relief
26 in the Petition prevents the Respondent from being able to assert appropriate objections and
27 defenses.

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1 Due to Petitioner's unsatisfactory showing, the Court dismisses the action without
2 prejudice. Should Petitioner decide to file a new petition, he is advised to *clearly and succinctly*
3 state all grounds for relief using the First Amended Petition form sent to Petitioner with this
4 order.

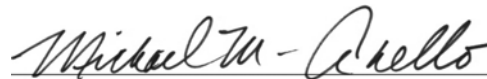
5 **CONCLUSION AND ORDER**

6 Accordingly, the Court **CONSTRUES** the instant action as a habeas petition brought
7 pursuant to 28 U.S.C. § 2254. The Court **GRANTS** Petitioner's request to proceed in forma
8 pauperis, and **DISMISSES** the case without prejudice. To have this case reopened, Petitioner
9 must file an amended petition which cures the pleading deficiency discussed above **no later**
10 **than December 13, 2010.**

11 *The Clerk of Court is directed to send Petitioner a blank First Amended Petition form.*

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13 **IT IS SO ORDERED.**

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15 DATED: November 12, 2010



16 Hon. Michael M. Anello
17 United States District Judge
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