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

DEGHAWN BROADNAX,

Petitioner,

v.

KATHLEEN ALLISON, Warden

Respondent.

Civil No. 12-0560 MMA (RBB)

ORDER:

**(1) DENYING APPLICATION TO
PROCEED IN FORMA PAUPERIS and**

**(2) DISMISSING CASE
WITHOUT PREJUDICE AND WITH
LEAVE TO AMEND**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

APPLICATION TO PROCEED IN FORMA PAUPERIS

Petitioner has filed a document declaring his indigence which this Court construes as a request to proceed in forma pauperis. The request to proceed in forma pauperis is denied because Petitioner has not provided the Court with sufficient information to determine Petitioner's financial status. A request to proceed in forma pauperis made by a state prisoner must include a certificate from the warden or other appropriate officer showing the amount of money or securities Petitioner has on account in the institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2. Petitioner has failed to provide the Court with the required Prison Certificate.

1 **FAILURE TO NAME PROPER RESPONDENT**

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

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

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

22 Here, Petitioner has incorrectly named “Kathleen Allison,” as Respondent. In order for
23 this Court to entertain the Petition filed in this action, Petitioner must name the warden in charge
24 of the state correctional facility in which Petitioner is presently confined or the Director of the
25 California Department of Corrections. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.
26 1992) (per curiam).

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

2 In addition, Rule 2(c) of the Rules Governing Section 2254 Cases states that the petition
3 “shall set forth in summary form the facts supporting each of the grounds . . . specified [in the
4 petition].” Rule 2(c), 28 U.S.C. foll. § 2254. See also Boehme v. Maxwell, 423 F.2d 1056, 1058
5 (9th Cir. 1970) (trial court’s dismissal of federal habeas proceeding affirmed where petitioner
6 made conclusory allegations instead of factual allegations showing that he was entitled to relief).
7 Here, Petitioner has violated Rule 2(c). Although Petitioner does not fail to state generalized
8 constitutional grounds for relief, he does fails to provide specific factual allegations in support
9 of such grounds in the petition.

10 While courts should liberally interpret pro se pleadings with leniency and understanding,
11 this should not place on the reviewing court the entire onus of ferreting out grounds for relief.
12 Zichko v. Idaho, 247 F.3d 1015, 1020-21 (9th Cir. 2001). The Court finds that the Petition contains
13 conclusory allegations without any specific facts in support of relief. A federal court may not
14 entertain a petition that contains allegations which are conclusory.

15 In order to satisfy Rule 2(c), Petitioner must point to a “real possibility of constitutional
16 error.” Cf. Blackledge v. Allison, 431 U.S. 63, 75 n.7 (1977) (internal quotation marks omitted).
17 Facts must be stated, in the petition, with sufficient detail to enable the Court to determine, from
18 the face of the petition, whether further habeas corpus review is warranted. Adams v.
19 Armontrout, 897 F.2d 332, 334 (8th Cir. 1990). Moreover, the allegations should be sufficiently
20 specific to permit the respondent to assert appropriate objections and defenses. Harris v. Allen,
21 739 F. Supp. 564, 565 (W.D. Okla. 1989). Here, the lack of grounds for relief in the Petition
22 prevents the Respondent from being able to assert appropriate objections and defenses.

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

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CONCLUSION

Based on the foregoing, the Court **DENIES** Petitioner's request to proceed in forma pauperis, and **DISMISSES** the case without prejudice and with leave to amend for Petitioner's failure to name a proper respondent, and state grounds for relief in the petition. In order to have this case reopened, Petitioner must submit **no later than May 15, 2012**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee AND a First Amended Petition that cures the deficiencies outlined above. *The Clerk of Court is directed to send a blank Southern District of California In Forma Pauperis Application and blank First Amended Petition form to Petitioner along with a copy of this Order.*

IT IS SO ORDERED.

DATED: March 9, 2012



Hon. Michael M. Anello
United States District Judge