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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JACK DANIEL VESS II,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.
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CASE NO. 3:17-cv-05700-RBL-JRC

ORDER TO SHOW CAUSE OR
AMEND

16 The District Court has referred this petition for a writ of habeas corpus to United States
17 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §
18 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the
19 petition pursuant to 28 U.S.C. § 2254.

20 Petitioner Jack Daniel Vess II challenges his convictions for rape in the second degree
21 and incest in the first degree. He claims that his sentence violated the Fourth Amendment and
22 that the State produced insufficient and contradictory evidence that cannot sustain his conviction.
23 However, petitioner has only included the State of Washington as the defendant, rather than the
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1 state officer who has custody of him. Having reviewed the petition, the Court declines to serve
2 the petition because the petition does not comply with the Rules Governing Section 2254 Cases.
3 The Court, however, provides petitioner leave to file an amended petition by October 27, 2017 to
4 cure the deficiencies identified herein.

5 BACKGROUND

6 Petitioner was convicted of second degree rape and first degree incest in 2009. Dkt. 3 at
7 2. He filed a direct appeal with the Court of Appeals claiming that the State improperly
8 introduced testimony, the trial court abused its discretion, the State mischaracterized its burden
9 of proof, and the trial court violated his due process rights when he was sentenced as a persistent
10 offender. *Id.* at 2-3. The Court of Appeals denied him relief. *Id.* He brought identical claims
11 before the Washington Supreme Court, who similarly denied him relief. *Id.* at 3. It appears
12 prisoner has not filed a state personal restraint petition before filing the current habeas action.

13 DISCUSSION

14 Petitioner has included the incorrect defendant on his habeas petition. Under Rule 2(a) of
15 the Rules Governing Section 2254 Cases, “the petition must name as respondent the *state officer*
16 *who has custody.*” (emphasis added). Further,

17 [t]he petition must: (1) specify all the grounds for relief available to the petitioner;
18 (2) state the facts supporting each ground; (3) state the relief requested; (4) be
19 printed, typewritten, or legibly handwritten; and (5) be signed under penalty of
perjury by the petitioner or person authorized to sign it for the petitioner under 28
U.S.C. §2242.

20 *Id.* at Rule 2(c). The petition must “substantially follow” a form prescribed by the local district
21 court or the form attached to the Rules Governing Section 2254 Cases. *Id.* at Rule 2(d).

22 Here, petitioner has named the State of Washington as the sole respondent in violation of
23 Rule 2(a). If petitioner intends to pursue this habeas action, he must file an amended petition
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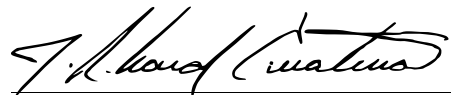
1 naming the correct defendant in compliance with Rule 2(a) of the Rules Governing Section 2254
2 Cases on the form provided by the Court. The amended petition must also be legibly rewritten or
3 retyped in its entirety, it should be an original and not a copy, it should contain the same case
4 number, and it may not incorporate any part of the original petition by reference. The amended
5 petition will act as a complete substitute for the original petition, and not as a supplement.
6 Included as the defendant should be the superintendent of the prison where petitioner's resides.
7 Because petitioner currently resides at the Washington State Penitentiary, the appropriate
8 defendant is Superintendent Donald Holbrook.

9 CONCLUSION

10 If petitioner fails to adequately address the issues raised herein and file an amended
11 petition **on or before October 27, 2017**, the undersigned will recommend dismissal of this
12 action.

13 The Clerk is directed to provide petitioner with the forms for filing a petition for habeas
14 corpus relief pursuant to 28 U.S.C. § 2254. The Clerk is further directed to provide copies of this
15 Order to petitioner.

16 Dated this 25th day of September, 2017.

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18 J. Richard Creatura
19 United States Magistrate Judge
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