



E-FILED
 CNMI SUPERIOR COURT
 E-filed: Dec 22 2021 03:40PM
 Clerk Review: Dec 22 2021 03:40PM
 Filing ID: 67187544
 Case Number: 20-0168-CV
 N/A

FOR PUBLICATION

IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

<p>SHAWN APPLEBY,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>WALLY VILLAGOMEZ, COMMISSIONER, CNMI DEPARTMENT OF CORRECTIONS (DOC),</p> <p style="text-align: center;">and</p> <p>RAMON B. CAMACHO, CHAIRMAN, CNMI BOARD OF PAROLE (BOP),</p> <p style="text-align: center;">Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION NO. 20-0168</p> <p>ORDER:</p> <p>(1) FINDING THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS NOT PROCEDURALLY DEFAULTED, AND</p> <p>(2) ORDERING RESPONDENTS TO FILE AN AMENDED RETURN ADDRESSING THE AMENDED PETITION ON THE MERITS</p>
---	--	--

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on August 4, 2021. Petitioner Shawn Appleby (“Petitioner”) and Respondents Wally Villagomez, in his official capacity as Commissioner of the CNMI Department of Corrections, and Ramon B. Camacho, in his official capacity as Chairman of the CNMI Board of Parole (“Respondents”) (together, the “Parties”) were heard on the issue of whether the Amended Petition for Writ of Habeas Corpus (the “Amended Petition”) was procedurally defaulted for want of a verification conforming to the requirements of 6 CMC § 7102.

Petitioner was represented by Assistant Public Defender Jean Pierre Nogues. Respondent Villagomez was represented by Chief Solicitor J. Robert Glass, Jr. Respondent Camacho was represented by Assistant Attorney General Leslie A. Healer. Based upon a review of the arguments, filings, and relevant law, the Court finds that the Amended

By order of the Court, Presiding Judge Roberto C. Naraja

1 Petition is not procedurally defaulted and orders Respondents to file an amended Return of
2 True Cause for Detention addressing the Amended Petition on the merits.

3 II. PROCEDURAL BACKGROUND

4 Petitioner is currently detained under the custody of the CNMI Department of
5 Corrections (“DOC”) for an alleged parole violation occurring on or about March 24, 2020.
6 *See* Ex. A to Amended Pet. (“Order Suspending Parole and Warrant for Arrest”). The
7 CNMI Board of Parole (“BOP”) held a preliminary hearing on April 13, 2020 to determine
8 whether probable cause existed to find that Petitioner had violated his parole. *See* Ex. E to
9 Amended Pet. (“Preliminary Hearing Summons”).

10 Following the preliminary hearing, Petitioner filed his original Petition for Writ of
11 Habeas Corpus on June 19, 2020, alleging that the preliminary hearing violated his Due
12 Process rights under the Fifth and Fourteenth Amendments of the U.S. Constitution and
13 Article I, Section 5 of the Commonwealth Constitution. *See* Petition for Writ of Habeas
14 Corpus (filed June 19, 2020) (the “Petition”).

15 On June 23, 2020, this Court ordered Respondents to file a Return of True Cause
16 for Detention pursuant to 6 CMC § 7104. Respondent Villagomez filed a Return on July 6,
17 2020 (the “Original Return”) arguing that the Petition should be denied because it is
18 procedurally defective and because it fails on the merits. *See* Return of True Cause of
19 Detention (filed July 6, 2020) at 14 (“The Court should deny the petition for writ of habeas
20 corpus as Petitioner has administrative remedies still pending, has provided no verified
21 facts to the court as no facts are alleged under oath, and Petitioner was given minimal due
22 process that comports with *Morrissey*.”).

23 The Court *sua sponte* dismissed this matter for lack of subject matter jurisdiction on
24 August 17, 2020 before reaching the merits of the Parties’ arguments in the Petition and
25 Return. *See* Order Dismissing Case for Lack of Subject Matter Jurisdiction (filed August
26 17, 2020) (the “Order”). On December 17, 2020, the NMI Supreme Court held that this
27 Court does have subject matter jurisdiction over the Petition, vacated the Order, and
28

1 remanded the case for further proceedings. *See Appleby v. Villagomez et al.*, 2020 MP 23
2 (Dec. 17, 2020).

3 On May 19, 2021, this Court ordered Petitioner to file an amended Petition to
4 include new allegations¹ raised against Respondents, namely that Respondents had again
5 violated Petitioner’s due process rights at a final parole revocation hearing held by the BOP
6 on July 10, 2020. *See Order to File Amended Writ* (filed May 19, 2021). Petitioner filed
7 an Amended Petition for Writ of Habeas Corpus (the “Amended Petition”) on June 10,
8 2021², which included all allegations against Respondents pertaining to the allegedly
9 unlawful preliminary hearing and the allegedly unlawful final parole revocation hearing.
10 *See Amended Petition* (filed June 10, 2021) at 10-23.

11 Respondents jointly filed a Return of True Cause for Detention on July 12, 2021
12 (the “Second Return”) in response to the Amended Petition. *See Return of True Cause for*
13 *Detention* (filed July 12, 2021). Inexplicably, the Second Return omits the merits-based
14 arguments brought in the Original Return and raises only alleged procedural defects.
15 *Compare* Original Return at 6 (“Summary of Arguments: . . . (3) Petitioner is not entitled to
16 mandatory indigent representation for a preliminary parole revocation hearing; (4) If found
17 to be in violation of Constitutional rights, proper remedy is remand for new preliminary
18 hearing. . .”) *with* Second Return at 4 (“Summary of Arguments: . . . (3) If the Court does
19 not dismiss for these preliminary [procedural] issues, then the Court should issue an order
20 of the facts it believes are in controversy and the Constitutional issues it believes should be
21 addressed.”).³

23 ¹ *See* Petitioner’s Summary of Contested Issues and Proposed Procedures (filed April 7,
24 2021).

25 ² Although the Order to File Amended Writ set a filing date of May 25, 2021 for
26 Petitioner’s Amended Petition, the Court allowed Petitioner an extension to June 10, 2021
while the Court ruled on a pending Joint Motion to Reconsider filed by Respondents. *See*
Order Denying Motion for Reconsideration (filed May 27, 2021) at 1:14-15.

27 ³ Respondents provide no explanation for why the Second Return fails to raise arguments
28 addressing the Amended Petition on the merits (i.e., why it fails to address Petitioner’s
legal arguments concerning the alleged due process violations). It is clear from the
Original Return that Respondents are aware of the constitutional issues in this case and the
legal arguments therefore. Nevertheless, Respondents will be allowed to file an amended

1 Petitioner filed a Reply to Respondents’ Second Return on July 29, 2021. *See*
2 Petitioner’s Reply to Respondents’ Return of True Cause for Detention (filed July 29,
3 2021). Respondents filed a Surreply on August 2, 2021. *See* Response to Petitioner’s
4 Reply (filed August 2, 2021). The Court now addresses the procedural argument raised in
5 Respondents’ Second Return, namely that the Amended Petition was procedurally
6 defaulted for want of a verification conforming to the requirements of 6 CMC § 7102.⁴

7 III. LEGAL STANDARD

8 The law pertaining to the verification requirement under the Commonwealth’s
9 habeas corpus statute is set forth in 6 CMC § 7102:

10 *Application for the writ of habeas corpus shall be made to the court by a*
11 *written statement under oath signed by the party for whose relief it is*
12 *intended, or by some person in his or her behalf.* It shall set forth the facts
13 concerning the imprisonment or restraint of the person for whose relief it is
14 intended, and, if known, the name of the person who has custody over the
person seeking relief, and by virtue of what claim or authority the restraint
or imprisonment is being practiced.

15 6 CMC § 7102 (emphasis added).

16 “Niceties of pleading are not favored in habeas corpus proceedings. A petition
17 which substantially complies with the provisions of [the habeas corpus statute] is all that is
18 necessary to secure the writ and bring before the judge the petitioner and his cause of
19 detention.” *Rice v. State*, 460 So. 2d 254, 256 (Ala. Cr. App. 1984) (reversing trial court’s
20 dismissal of habeas corpus petition). “Caution should be exercised . . . to insure that such a
21 dismissal does not deny the constitutional protection of habeas corpus to an individual with
22 a legitimate grievance on purely technical grounds.” *Freeman v. Department of*
23

24
25 Return addressing Petitioner’s arguments on the merits. Respondents are cautioned to
26 bring all potential arguments, procedural or otherwise, in their Return in future habeas
corpus cases to avoid those arguments being deemed waived.

27 ⁴ The Court will not address Respondents’ argument that ABA Model Rule of Professional
28 Conduct 3.7 requires Petitioner’s counsel to be disqualified, *see* Second Return at 8,
because Respondents have conceded the issue is moot. *See* Surreply at 4 (“As Petitioner
has conceded this point, and is not relying on his own direct observations for any of the
facts, this issue is moot.”).

1 *Corrections, Comm'n of Pardons & Paroles*, 783 P.2d 324, 326 (Idaho Ct. App. 1989)
2 (reversing trial court's dismissal of habeas corpus petition); *see also Coleman v. Peyton*,
3 340 F.2d 603, 604 (4th Cir. 1965) (“[W]e feel that claims of legal substance should not be
4 forfeited because of a failure to state them with technical precision.”).

5 6 **IV. DISCUSSION**

7 **A. The Amended Petition Substantially Complies with the Verification 8 Requirement of 6 CMC § 7102.**

9 The verification submitted by Petitioner's attorney appears within the Amended
10 Petition itself and states, in relevant part, as follows:

11 I, Jean Pierre Nogues, Counsel for Petitioner, swear and affirm, upon
12 information and belief, that all factual assertions made within the Amended
13 Petition, Amended Statement of Facts, and Amended Memorandum of
14 Points and Authorities are truthful and based upon public record, the
attached certified transcript, the attached exhibits, and my own direct
observations. The electronic signature at the conclusion of this document
indicates counsel's oath, as an Officer of the Court, as to the truthfulness of
this affidavit.

15 *See* Amended Petition at 10.

16 Respondents contend that there are no facts before this Court to adjudge because
17 Petitioner has failed to submit an affidavit under oath setting forth the factual
18 underpinnings of the Amended Petition. *See* Second Return at 4-8 (“Petitioner has failed to
19 bring forth any facts for this Court to examine and the writ should be dismissed on that
20 ground alone. . . . [N]o facts were alleged or supported by affidavit.”). Respondents at
21 times appear to argue that the verification submitted by Petitioner's attorney fails for lack
22 of a separate affidavit, *see id.* at 5 (“Petitioner's application contains a section labeled
23 ‘Affidavit in Support of Amended Petition,’ but *no such affidavit is attached* . . .”) (emphasis added), while at other times argue that the inclusion of “upon information and
24 belief” language disqualifies the verification entirely. *See* Surreply at 3 fn.3 (“Petitioner's
25 ‘under information and belief’ [language] does not comport to an affidavit under penalty of
26 perjury . . .”). Petitioner responds that the provided verification substantially complies with
27 6 CMC § 7102. The Court agrees.
28

1 Section 7102 of the CNMI habeas corpus statute provides, in relevant part, that an
2 “[a]pplication for the writ of habeas corpus shall be made to the court *by a written*
3 *statement under oath* signed by the party for whose relief it is intended, or by some person
4 in his or her behalf.” 6 CMC § 7102 (emphasis added). The statute does not elaborate on
5 what complies with the “under oath” requirement. *See id.* States desiring to set a high
6 procedural bar for verification have done so either by explicitly drafting additional
7 requirements into their habeas corpus statute or through judge-made law. *See, e.g., State*
8 *ex. rel. Santana v. Endicott*, 709 N.W.2d 515, 520 (Wisc. 2005) (“Verification entails
9 signing the document in the presence of a notary public.”); *Rice*, 460 So. 2d at 255
10 (Alabama habeas corpus statute requires inclusion of language in verification “to the effect
11 that the statements therein contained are true to the best of [the applicant’s] knowledge,
12 information and belief”). The CNMI’s habeas corpus statute contains no such additional
13 requirements beyond “a written statement under oath.”

14 In the absence of express language requiring more, the Court will not read into 6
15 CMC § 7102 any additional procedural hurdles that distract from the merits of a habeas
16 corpus petition. Petitioner’s attorney has provided to this Court a written statement—the
17 Amended Petition itself—containing his signature and a verification that he “swear[s] and
18 affirm[s]” to the truthfulness of the factual assertions made within. *See* Amended Petition
19 at 10. The Court finds that this substantially complies with 6 CMC § 7102 and that
20 Petitioner’s attorney may be subject to the penalties of perjury if it is discovered that he
21 willfully falsified any information contained in the Amended Petition or its attachments.⁵

22
23 ⁵ The cases cited by Respondents in footnote 13 of the Second Return do not persuade the
24 Court otherwise. Some of the cases are inapposite because they involve a complete lack of
25 verification by either the petitioner or the petitioner’s attorney rather than a dispute over
whether a proffered verification met the statutory requirements. *See Davis v. Sheldon*, 159
Ohio St. 3d 147 (2020); *Shaw v. State*, 211 S.W.3d 506 (Arkansas 2005); *Freeman v. State*,
783 P.2d 324 (Ct. App. 1989).

26 Many cases cited by Respondents contain no discussion whatsoever of the verification
27 requirements of a habeas corpus petition because the petitions were found deficient for
28 other reasons. *See In re Ricket*, 203 A.2d 602 (Vermont 1964) (petitioner failed to allege
facts and merely set forth conclusions of law); *State v. Lee*, 206 N.W. 417 (N.D. 1925)
(petition consisted almost entirely of legal conclusions); *Genz v. State*, 440 P.2d 992 (Ct.
Crim. App. 1968) (dismissing case not for lack of verification but for failure to state a

1 See *Rice*, 460 So. 2d at 256 (“The words ‘sworn to’ at the foot of Rice’s petition must be
2 taken to mean that he declared on oath that the allegations set forth in his petition were
3 true, and we are of the opinion that this satisfied the requirements of verification . . .”);
4 *Shorette v. State*, 402 A.2d 450, 454 (Maine 1979) (“Shorette’s oath that he ‘believed the
5 same to be true’, if willfully and corruptly false, would subject him to the penalties of
6 perjury . . .”). Additionally, this Court has accepted similar verifications in past habeas
7 corpus petitions. See, e.g., *Rios v. Commonwealth Dept. of Corrections, et al.*, Civ. No. 20-
8 0081 (NMI Super. Ct. Feb. 25, 2020) (Petition for Writ of Habeas Corpus at 9) (“I declare
9 under penalty of perjury that the foregoing is true and correct to the best of my knowledge,
10 information, and belief.”).

11 Respondents raise an additional point that “while there are exhibits attached that
12 Petitioner claims to be from the public record, he makes no oath that they are true and
13 correct copies, nor does he certify that the transcript is a true and accurate recreation of the
14

15 claim); *Ex Parte Antoscia*, 94 A. 871 (Rhode Island 1915) (failure to state a claim);
16 *Hopkins v. State*, 708 P.2d 46 (Wyoming 1985) (petition barred by res judicata); *State ex*
rel. Hirst v. Warden, Montana State Prison Deer Lodge, 511 P.2d 978 (Mont. 1973)
(petition utterly bereft of any facts or allegations of rights violated).

17 Several cases involving dismissal of a habeas corpus petition for insufficient verification
18 did not discuss in any manner what was actually filed by the petitioner and why it did not
19 meet the verification requirement; these cases are therefore of little value to the Court’s
20 analysis. See *In Hall v. State*, 746 So.2d 544 (Florida App. 1999); *Sheriff, Clark County v.*
Scalio, 616 P.2d 402 (Nevada 1980); *Baisden v. State*, 620 S.E.2d 369 (Georgia 2005);
Pruitt v. State, 509 So.2d.258 (Alabama 1987); *Cooper v. State ex. rel. Eyman*, 438 P.2d
341 (Arizona 1968).

21 *State ex. rel. Santana v. Endicott* is inapposite because the habeas corpus statute involved
22 explicitly set a higher procedural bar for verification than does the CNMI habeas corpus
statute. 709 N.W.2d 515, 520 (Wisc. 2005) (“Verification entails signing the document in
the presence of a notary public.”).

23 Still other cases do not stand for the proposition that an unverified petition must be denied
24 or dismissed. See *Shorette v. State*, 402 A.2d 450 (Maine 1979) (where verification was
undated, concurrently-filed affidavit stating that petitioner has “read and know[s] the
25 contents of the petition and believe[s] the same to be true” was sufficient to meet
verification requirement); *Ex Parte Golden*, 991 S.W.2d 859 (Tex. Crim. App. 1999)
26 (finding that the record was adequate to enable the court to address petitioner’s claim on
the merits, despite petitioner’s failure to sign a declaration mandated by statute and
encompassing specific language).

27 The remaining cases do not involve habeas corpus petitions at all. See *State v. Tune*, 98
28 A.2d 881 (N.J. 1953); *Domingo v. Celis*, 2016 MP 18 ¶ 12; *Ross, Keen & Co. v. Steen*, 20
Fla. 443 (1884).

1 proceedings.” See Second Return at 7. Section 7106 of the CNMI’s habeas corpus statute
2 states that “on application for a writ of habeas corpus, documentary evidence, transcripts of
3 proceedings upon arraignments, plea, sentence, and a transcript of the oral testimony
4 introduced on any previous similar application by or on behalf of the same person shall be
5 admissible in evidence.” 6 CMC § 7106. The statute contains no requirement of an oath
6 attesting that such documents, attached as exhibits to a habeas corpus petition, are true and
7 correct copies, and the Court declines to read such a requirement into the statute.

8 For the reasons above, the Court finds that the Amended Petition substantially
9 complies with 6 CMC § 7102 and is not procedurally defaulted for lack of verification.

10 **B. The Ninth Circuit and Other Courts Have Found That a Trial Court Has**
11 **Discretion to Address the Merits of an Unverified Petition.**

12 Although the Court finds that the verification provided by Petitioner’s attorney
13 substantially complies with 6 CMC § 7102, the Court also notes that several courts,
14 including the Ninth Circuit, have found that a judge has discretion to proceed with the
15 merits of an unverified habeas corpus petition.

16 In *Hendricks v. Vasquez*, the Ninth Circuit noted that “[t]he respondents cite no
17 authority for the proposition that it is reversible error for the district court to address the
18 merits of an unverified petition. The district court may refuse to file, or may dismiss, an
19 unsigned and unverified petition. ***However, the defect is one that the district court may, if***
20 ***it sees fit, disregard.***” 908 F.2d 490, 491 (9th Cir. 1990) (emphasis added); see also
21 *Morris v. United States*, 399 F. Supp. 720, 723 (E.D. Va. 1975) (addressing petitioner’s
22 constitutional claim despite the lack of verification); *Lewis v. Connett*, 291 F. Supp. 583,
23 585 (W.D. Ark. 1968) (finding that petitioner’s failure to verify petition did not preclude
24 district court from exercising jurisdiction).

25 The petitioner in *Quinn v. Dooley* failed entirely to include an under-oath perjury
26 declaration; nevertheless, the court found that “given the history of this case, the amount of
27
28

1 time that has passed since his petition was filed and Quinn’s pro se status,⁶ dismissing the
2 petition . . . is neither called for nor justified. *The defects noted appear to be an oversight*
3 *and do not deprive this Court of jurisdiction. They are thus defects that the Court, if it*
4 *sees fit, may disregard.”* 272 F.Supp.2d 839, 845 (D.S.D. 2003) (emphasis added). The
5 court also found that “[t]he statements and responses . . . in [Petitioner’s] second petition
6 are supported by the record” and then proceeded to consider the petition on the merits. *Id.*

7 As in *Quinn*, this Court finds that the statements made in the Amended Petition are
8 supported by the record, including by the court-certified transcript of the relevant hearings
9 and phone calls made by Petitioner. Were there any defects with the verification submitted
10 by Petitioner’s attorney, the Court would nevertheless exercise its discretion to address the
11 Amended Petition on the merits as contemplated by *Hendricks* and *Quinn*.

12 **C. Respondents Are Ordered to File an Amended Return Addressing the**
13 **Amended Petition on the Merits.**

14 Respondents are ordered to file an amended Return of True Cause for Detention
15 addressing the issues raised in the Amended Petition on the merits. This will include, at
16 minimum, addressing the following legal questions:

- 17 (1) Whether parolees in the CNMI have a Due Process right at both their
18 preliminary hearing and final revocation hearing to be appointed counsel upon
19 request (and to be notified of this right), to present evidence and confront
20 adverse witnesses, and to have a neutral and detached arbiter preside over the
21 hearings?
- 22 (2) Where a parole revocation process is found to have violated a parolee’s Due
23 Process rights, what is the proper remedy?

24 Respondents shall file their amended Return no later than **January 10, 2022**.
25 Petitioner may file a Reply to the amended Return no later than **January 20, 2022**. The
26

27 ⁶ Although Petitioner is represented by counsel, the Court notes that many habeas corpus
28 petitions are brought by pro se litigants who do not have any formal legal training. The
Court declines to read into the CNMI’s habeas corpus statute any requirements that would
create additional procedural hurdles for litigants with colorable constitutional claims.

1 matter shall thereafter be deemed under advisement by the Court to rule on the papers
2 without an evidentiary hearing.⁷

3 **V. CONCLUSION**

4 **THEREFORE**, for the reasons stated above, the Court finds that the Amended
5 Petition is not procedurally defaulted and orders Respondents to file an amended Return
6 addressing the Amended Petition on the merits. Respondents shall file their amended
7 Return no later than **January 10, 2022**. Petitioner may file a Reply to the amended Return
8 no later than **January 20, 2022**. The matter shall thereafter be deemed under advisement
9 by the Court to rule on the papers without an evidentiary hearing.

10
11 **IT IS SO ORDERED** this 22nd day of December 2021.

12
13 /s/
14 **ROBERTO C. NARAJA**, Presiding Judge

15
16
17
18
19
20
21 ⁷ In *Commonwealth v. Castro*, the NMI Supreme Court stated that a judge has broad
22 discretion in whether to hold an evidentiary hearing. 2017 MP 20 ¶ 11. The Court finds
23 that there is no need for an evidentiary hearing where Petitioner has had an opportunity to
24 contest the facts presented by Respondents in support of their true cause for detention, *see*
25 Reply to Respondents Second Return (filed July 29, 2021) at 8-9, where the remaining
26 facts are uncontroverted, and where the Parties acknowledge that the Court may rely on the
27 documentary evidence submitted by both Parties, including the verified transcript of the
28 preliminary hearing and final revocation hearing. *See* 6 CMC § 7106 (“documentary
evidence . . . shall be admissible in evidence”); Reply to Respondent’s Second Return (filed
July 29, 2021) at 4 (“All facts asserted in the Amended Petition cite directly to the attached
exhibits and transcripts. There are no facts alleged that are based on anything outside of
those self-authenticating documents.”) and 9 (“Petitioner does not, at this time, declare any
other material facts . . .”); Surreply at 4 (“Respondent[s] [do] not controvert any of the facts
contained in Petitioner’s Exhibits With no facts in controversy, there is no need for
additional evidence to be taken as Petitioner has pled their case based on the current
record.”).