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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SALVADOR ZAPIEN,

1:08-cv-01988-DLB (HC)

Petitioner,

ORDER REGARDING RESPONDENT’S  
REQUEST FOR ORDER TO SHOW CAUSE  
REGARDING DISMISSAL OF CLAIM FIVE

v.

[Doc. 29]

D.K. SISTO,

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), the parties have consented to the jurisdiction of the United States Magistrate Judge. Local Rule 305(b).

On January 19, 2011, the Court directed Respondent to file a response to the Third Amended Petition. After receiving an extension of time, on April 21, 2011, Respondent filed a request for an order to show cause regarding dismissal of Claim Five. Petitioner filed an opposition on May 5, 2011.

DISCUSSION

Respondent requests that the Court issue a order to show cause regarding Claim Five of the Third Amended Petition in which Petitioner challenges the trial court’s denial of his right to self-representation. Respondent claims that because Petitioner provided only portions of the transcript of the state court’s Marsden hearing, Petitioner has failed to provide this Court with sufficient evidence to make out a prima facie case on the merits.

1 Rule 5 of the Rules Governing Section 2254 Cases, the state must indicate what  
2 transcripts are available and what proceedings have been record but were not transcribed. In  
3 addition, if and when an answer is filed, the government must attach any portions of the  
4 transcript it deems relevant. The judge may thereafter direct Respondent to submit other portions  
5 of the transcripts or parts of untranscribed recordings be transcribed and furnished. If the  
6 transcript cannot be obtained, Respondent is permitted to provide a narrative summary of the  
7 evidence.

8 Pursuant to Rule 5, the Court will not place the burden on Petitioner to submit a complete  
9 copy of the *Marsden* transcript;<sup>1</sup> rather, the burden is on Respondent. If Respondent is unable to  
10 obtain a copy of said transcript because it is filed under seal, the proper remedy is to seek an  
11 order by this Court directing the state court to furnish such transcripts to be filed under seal in  
12 this Court.

13 Based on the foregoing, it is HEREBY ORDERED that Respondent's request for an order  
14 to show cause regarding Claim Five is DENIED.

15 IT IS SO ORDERED.

16 **Dated: May 16, 2011**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> The burden to submit the court with portions of the record is on Petitioner only if he challenges the sufficiency of the evidence. 28 U.S.C. § 2254(f).