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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

JESSE J. VALE,  
Petitioner,  
vs.  
CONNIE GIBSON,  
Respondent.

No. C 14-1588 NJV (PR)  
**ORDER FOR RESPONDENT  
TO SHOW CAUSE**

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Santa Clara County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d). Petitioner has paid the filing fee and consented to the jurisdiction of a Magistrate Judge. Docket No. 3.

**BACKGROUND**

A jury convicted petitioner of carjacking and second degree robbery. Petitioner admitted he had three prior serious felony convictions and was sentenced to 42 years to life for the carjacking with a concurrent term of 40 years to life for the robbery. Petitioner states that he appealed to the court of appeals and state supreme court, but those appeals were denied.

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet

**United States District Court**  
For the Northern District of California

1 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An  
2 application for a federal writ of habeas corpus filed by a prisoner who is in state custody  
3 pursuant to a judgment of a state court must “specify all the grounds for relief available to  
4 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules  
5 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the  
6 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”  
7 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.  
8 1970)).

9 **B. Legal Claims**

10 Petitioner’s sole ground for federal habeas relief is that the trial court erroneously  
11 denied his motion which stated that the prosecutor improperly used peremptory challenges  
12 in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). This claim is sufficient to require a  
13 response.

14 **CONCLUSION**

15 1. The clerk shall serve by regular mail a copy of this order, the petition and all  
16 attachments thereto and a Magistrate Judge jurisdiction consent form on respondent and  
17 respondent’s attorney, the Attorney General of the State of California. The clerk also shall  
18 serve a copy of this order on petitioner.

19 2. Respondent shall file with the court and serve on petitioner, within fifty-six (56)  
20 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
21 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
22 not be granted. Respondent shall file with the answer and serve on petitioner a copy of all  
23 portions of the state trial record that have been transcribed previously and that are relevant  
24 to a determination of the issues presented by the petition.

25 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
26 the court and serving it on respondent within twenty-eight (28) days of his receipt of the  
27 answer.

28 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an

1 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
2 Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the  
3 date this order is entered. If a motion is filed, petitioner shall file with the court and serve  
4 on respondent an opposition or statement of non-opposition within twenty-eight (28) days of  
5 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
6 within fourteen (14) days of receipt of any opposition.

7 4. Petitioner is reminded that all communications with the court must be served on  
8 respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
9 must keep the court informed of any change of address and must comply with the court's  
10 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
11 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*  
12 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

13 **IT IS SO ORDERED.**

14 Dated: May 6, 2014.

  
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NANDOR J. VADAS  
United States Magistrate Judge

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