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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

DEREK A. HAFELINGER,  
Petitioner,  
v.  
WARDEN SCOTT FRAUENHEIM,  
Respondent.

Case No. 18-cv-0879-RMI (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 Alameda County, 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.

**BACKGROUND**

Petitioner was convicted of multiple counts of oral copulation with, and the continuous sexual abuse of, his step-daughter. *People v. Hafelfinger*, No. A148236, 2017 WL 3124435, at \*1 (Cal. Ct. App. July 24, 2017). He was sentenced to twenty-one years to life in prison. *Id.* His appeals to the California Court of Appeal and California Supreme Court were denied. Petition at 2-3.

**DISCUSSION**

**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.*

1 *Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading  
2 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of  
3 habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court  
4 must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting  
5 each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’  
6 pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility  
7 of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
8 688, 689 (1st Cir. 1970)).

9 **Legal Claims**

10 As grounds for federal habeas relief, petitioner asserts that: (1) the trial court erred in  
11 admitting evidence of images of child pornography because they were obtained in an unlawful  
12 search; (2) the trial court abused its discretion in admitting the images and petitioner received  
13 ineffective assistance of counsel for this claim; (3) it was an error to admit evidence that petitioner  
14 watched adult pornography on the family computer and petitioner received ineffective assistance  
15 of counsel for this claim; (4) it was an error to admit evidence that the victim saw petitioner throw  
16 a knife across the kitchen and petitioner received ineffective assistance of counsel for this claim;  
17 (5) trial counsel was ineffective for failing to seek permission to impeach the victim; (6) the trial  
18 court erred in refusing to allow petitioner to cross-examine the victim cornering an alternate  
19 source of her knowledge of sex acts; (7) the trial court erred in denying petitioner’s motion for a  
20 new trial and petitioner received ineffective assistance of counsel for this claim; and (8) the  
21 cumulative error of the above claims requires reversal. Liberally construed these claims are  
22 sufficient to require a response.

23 **CONCLUSION**

24 1. The clerk shall serve by regular mail a copy of this order, the petition and all  
25 attachments thereto and a Magistrate Judge jurisdiction consent form on respondent and  
26 respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a  
27 copy of this order on petitioner.

28 2. Respondent shall file with the court and serve on petitioner, within fifty-six (56) days of

1 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
2 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
3 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state  
4 trial record that have been transcribed previously and that are relevant to a determination of the  
5 issues presented by the petition.

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

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

15 4. Petitioner is reminded that all communications with the court must be served on  
16 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep  
17 the court informed of any change of address and must comply with the court's orders in a timely  
18 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
19 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.  
20 1997) (Rule 41(b) applicable in habeas cases).

21 **IT IS SO ORDERED.**

22 Dated: March 12, 2018

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ROBERT M. ILLMAN  
United States Magistrate Judge