

1 THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 MICHAEL L. JONES,) No. C 03-0079 JSW (PR)
5 Petitioner,)
6 vs.) **SCHEDULING ORDER; ORDER**
7 GEORGE GALAZA, Warden,) **TO SHOW CAUSE; DENYING**
8 Respondent.) **MOTION FOR COUNSEL AND**
9) **DIRECTING CLERK TO REOPEN**
10) **CASE AND FILE AMENDED**
11) **PETITION**
12) **(Docket No. 37)**

13 **INTRODUCTION**

14 Petitioner, a prisoner of the State of California incarcerated at the California State
15 Prison at Corcoran, filed a pro se petition for a writ of habeas corpus under 28 U.S.C.
16 § 2254 on January 7, 2003 (docket no. 1). Per order dated January 14, 2003, Judge
17 Phyllis J. Hamilton denied Petitioner leave to proceed in forma pauperis, and directed
18 Respondent to show cause why the writ should not be granted (docket no. 3). On March
19 19, 2003, Respondent filed a motion to dismiss the petition as unexhausted (docket no. 6)
20 and on July 1, 2003, the petition was reassigned to this Court (docket no. 11). On June
21 18, 2003, Petitioner filed a motion for “withdrawal and abeyance” and for leave to
22 amend his petition (docket no. 10) which was granted (docket no. 12). Thereafter,
23 Petitioner filed multiple status reports informing the Court of his attempts to exhaust
24 additional claims in the state courts (docket nos. 18-28). On November 24, 2004,
25 Petitioner sought leave of Court to file an amended petition (docket no. 30), which was
26 granted. Petitioner’s motion for counsel was denied (docket no. 31). Petitioner’s
27 motions seeking an extension of time to file an amended petitioner were granted (docket
28 nos. 35, 36). Petitioner filed an amended petition on December 29, 2005. Petitioner
subsequently filed a second motion seeking reconsideration of the Court’s earlier denial

1 of his motion seeking appointment of counsel (docket no. 37). In this order, the Court
2 reopens the case which was previously administratively closed, orders the Clerk to file
3 the amended petition, reinstates the earlier order to show cause and DENIES Petitioner's
4 motion for reconsideration (docket no. 37).

5 **STATEMENT OF FACTS**

6 A Sonoma County Superior Court jury found Petitioner guilty of two counts of
7 home invasion robbery, one count of possession of stolen property, and two counts of
8 assault with a deadly weapon or by force likely to cause great bodily injury. In a
9 bifurcated proceeding, the trial court subsequently found true that Petitioner had suffered
10 a prior strike and a prior serious felony conviction. On December 1, 1999, the trial court
11 sentenced Petitioner to twenty-one years in state prison. Petitioner challenged his
12 conviction on direct appeal. On September 25, 2001, the California Court of Appeal
13 affirmed the judgment. On November 7, 2001, Petitioner petitioned for review in the
14 California Supreme Court. On December 19, 2001, the California Supreme Court denied
15 review. On January 3, 2002, Petitioner filed a petition for a writ of habeas corpus in the
16 California Supreme Court. On June 26, 2002, the California Supreme Court denied the
17 petition. Petitioner filed the present petition on January 7, 2003. Petitioner sought leave
18 to exhaust additional claims in the state courts. Petitioner filed an amended petition on
19 December 29, 2005.

20 **DISCUSSION**

21 A. Standard of Review

22 This court may entertain a petition for a writ of habeas corpus "in behalf of a person in
23 custody pursuant to the judgment of a State court only on the ground that he is in custody in
24 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

25 It shall "award the writ or issue an order directing the respondent to show cause why the
26 writ should not be granted, unless it appears from the application that the applicant or person
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1 detained is not entitled thereto." Id. § 2243.

2 B. Legal Claims

3 As grounds for federal habeas relief, petitioner asserts that: (1) His right to equal
4 protection and his Sixth Amendment right to an impartial jury venire were denied when the
5 panel called was not a fair cross section of the community; (2) his equal protection rights were
6 violated by the prosecutor's exercise of peremptory challenges; and (3) his trial counsel was
7 ineffective. These claims are sufficient to require a response.

8 **CONCLUSION**

9 For the foregoing reasons and for good cause shown,

10 1. Petitioner's motion for reconsideration is denied. In the Northern District of
11 California, no motion for reconsideration may be brought without leave of court and
12 Petitioner failed to seek leave to file such a motion. *See* Civil L.R. 7-9(a). However, the
13 Court has considered the motion as a second motion for counsel, as the earlier motion
14 was denied without prejudice. As Petitioner's amended petition has been filed and appears
15 to adequately represent the claims set forth therein, the motion is DENIED for the reasons set
16 forth in the Court's earlier denial of counsel (docket no. 37). However, the Court will *sua*
17 *sponte* reconsider the motion should circumstances change requiring the appointment of
18 counsel.

19 2. The Clerk shall reopen this administratively closed case, file the amended petition
20 and serve this order and the amended petition and all attachments thereto on Respondent's
21 attorney, the Attorney General of the State of California. The clerk also shall serve a copy of
22 this order on Petitioner.

23 3. Respondent shall file with the court and serve on Petitioner, within sixty days of the
24 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
25 Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.

26 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
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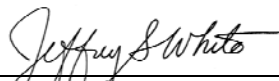
1 trial record that have been transcribed previously and that are relevant to a determination of the
2 issues presented by the petition.

3 4. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with
4 the court and serving it on Respondent within thirty days of his receipt of the answer.

5 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the court
6 informed of any change of address and must comply with the court's orders in a timely fashion.
7 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
8 Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
9 1997) (Rule 41(b) applicable in habeas cases).

10 IT IS SO ORDERED.

11 DATED: April 10, 2006

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14 JEFFREY S. WHITE
15 United States District Judge
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