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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JODY A. JESHURIN,)	No. C 03-1055 JSW (PR)
)	
Petitioner,)	
)	
vs.)	ORDER REOPENING
)	ADMINISTRATIVELY CLOSED CASE
GLORIA HENRY, Warden,)	AND TO SHOW CAUSE
)	
Respondent.)	
)	
_____)	

INTRODUCTION

Petitioner, a prisoner of the State of California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of her state conviction. On August 4, 2003, this Court issued an order to show cause why the petition should not be granted. Thereafter, on October 1, 2003, Respondent filed a motion to dismiss, alleging that the petition contains both exhausted and unexhausted claims (docket no. 8). On October 17, 2003, Petitioner filed a motion that the Court construed as one seeking a stay of the petition while she exhausted an additional claim in the state courts. Thereafter, Petitioner filed an amended petition. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted by a jury in Santa Clara County Superior Court of murder. On May 11, 2001, she was sentenced to twenty-five years to

1 life in state prison. The California Court of Appeal affirmed the judgment of conviction
2 in 2001, and the Supreme Court of California denied review in 2002. Petitioner
3 commenced this action on May 11, 2003 and filed a habeas petition in this action on May
4 29, 2003.

5 DISCUSSION

6 I Standard of Review

7 This Court may entertain a petition for a writ of habeas corpus “in behalf of a
8 person in custody pursuant to the judgment of a State court only on the ground that [s]he
9 is in custody in violation of the Constitution or laws or treaties of the United States.” 28
10 U.S.C. § 2254(a).

11 It shall “award the writ or issue an order directing the respondent to show cause
12 why the writ should not be granted, unless it appears from the application that the
13 applicant or person detained is not entitled thereto.” *Id.* § 2243.

14 II Legal Claims

15 Petitioner raises the following claims, all of which she alleges were presented to
16 the state courts: (1) the evidence was insufficient to support her felony-murder conviction
17 based on the underlying crime of torture, in violation of the Fourteenth Amendment;
18 (2) her Sixth and Fourteenth Amendment rights were violated by an erroneous jury
19 instruction defining the elements of torture; (3) ineffective assistance of counsel for failing
20 to subpoena crucial witnesses. As it does not appear from the face of the petition that
21 Petitioner is not entitled to relief, Respondent is directed to file an answer to the petition
22 or a dispositive motion, as appropriate.

23 CONCLUSION

24 For the foregoing reasons and for good cause shown,

25 1. The Clerk shall administratively reopen this case and serve by certified mail a
26 copy of this order and the petition, and all attachments thereto, on Respondent. The Clerk
27 also shall serve a copy of this order on Petitioner.

