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10 ISAAH THOMPSON-BONILLA,

No. C 05-1350 SI (pr)

11 Petitioner,

ORDER TO SHOW CAUSE

12 v.

13 W. A. DUNCAN, warden,

14 Respondent.

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INTRODUCTION

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BACKGROUND

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Thompson-Bonilla reports in his amended petition that he was convicted following a bench trial in Alameda County Superior Court of three counts of robbery with use of a firearm and one count of possession of a firearm by a felon. He also was found to have suffered prior convictions. On May 17, 2002, he was sentenced to 45 years to life in prison. He appealed. The California Court of Appeal affirmed the conviction and the California Supreme Court denied the

1 petition for review. Thompson-Bonilla also filed a petition for writ of habeas corpus in state
2 court before filing this action.

4 DISCUSSION

5 This court may entertain a petition for writ of habeas corpus "in behalf of a person in
6 custody pursuant to the judgment of a State court only on the ground that he is in custody in
7 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A
8 district court considering an application for a writ of habeas corpus shall "award the writ or issue
9 an order directing the respondent to show cause why the writ should not be granted, unless it
10 appears from the application that the applicant or person detained is not entitled thereto." 28
11 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are
12 vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v.
13 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

14 The first claim in the amended petition is that Thompson-Bonilla's right to equal
15 protection of the law was violated because African-Americans (a class of which he apparently
16 is a member) have been intentionally and purposefully singled out for the harsher sentencing
17 under California's Three Strikes law. Liberally construed, the claim is not patently frivolous and
18 warrants a response. See United States v. Armstrong, 517 U.S. 456 (1996).

19 The second claim in the amended petition is that the state breached a plea agreement
20 from a 1990 or 1992 conviction by using that conviction to increase his sentence under
21 California's Three Strikes law, in violation of Thompson-Bonilla's rights under the Due Process
22 Clause, the Equal Protection Clause, the Double Jeopardy Clause, and the Contract Clause of
23 the U.S. Constitution. The equal protection and double jeopardy contentions are meritless as to
24 a recidivist statute such as California's Three Strikes law. See Spencer v. Texas, 385 U.S. 554,
25 560 (1967); Jackson v. Nelson, 435 F.2d 553, 553 (9th Cir. 1971); see also United States v.
26 Kaluna, 192 F.3d 1188, 1193, 1197-1200 (9th Cir. 1999) (en banc) (finding that federal "three-
27 strikes statute's recidivist sentencing scheme" does not on its face violate Double Jeopardy
28 Clause, separation of powers doctrine, Ex Post Facto Clause, or Eighth Amendment

1 proportionality guarantee). The challenge based on the Contract Clause of the federal
2 constitution also must be dismissed because there is no Supreme Court authority for the
3 proposition that the Contract Clause protects the right of an accused from having a conviction
4 used to enhance a sentence on a subsequent conviction. See Williams (Terry) v. Taylor, 529
5 U.S. 362, 412 (2000) (restricting source of federal habeas relief, under § 2254(d)(1), to decisions
6 of the United States Supreme Court). Liberally construed, Thompson-Bonilla's claim that his
7 right to due process was violated because the 1990 or 1992 plea agreement was breached by the
8 later use of that conviction for sentence enhancement purposes is not patently frivolous and
9 warrants a response. See Santobello v. New York, 404 U.S. 257 (1971) Buckley v. Terhune, 441
10 F.3d 688 (9th Cir. 2006) (en banc); Brown v. Poole, 337 F.3d 1155 (9th Cir. 2003).

11 Thompson-Bonilla also alleges that California's Three Strikes law violates provisions of
12 the California Constitution. Those claims are dismissed without leave to amend because federal
13 habeas relief is available only for violations of the "Constitution or laws or treaties of the United
14 States" and is not available for state law violations. 28 U.S.C. § 2254(a); see Middleton v. Cupp,
15 768 F.2d 1083, 1085 (9th Cir. 1985) (state law violations not cognizable on habeas).

17 CONCLUSION

18 For the foregoing reasons,

19 1. The amended petition states two cognizable claims for habeas relief -- an equal
20 protection claim based on selective prosecution under the Three Strikes Law and a due process
21 claim based on a breach of the plea -- and warrants a response.

22 2. The clerk shall serve by certified mail a copy of this order and all other documents
23 in the file upon respondent and respondent's attorney, the Attorney General of the State of
24 California. The clerk shall also serve a copy of this order on petitioner.

25 3. Respondent must file and serve upon petitioner, on or before **September 8, 2006**,
26 an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
27 showing cause why a writ of habeas corpus should not be issued. Respondent must file with the
28 answer a copy of all portions of the court proceedings that have been previously transcribed and

1 that are relevant to a determination of the issues presented by the petition.

2 4. If petitioner wishes to respond to the answer, he must do so by filing a traverse
3 with the Court and serving it on respondent on or before **October 13, 2006**.

4 5. Petitioner's motion for leave to file the amended petition received on May 4, 2006
5 is GRANTED. (Docket #9.) The stay of proceedings that was imposed while petitioner
6 exhausted his state court remedies is now lifted and the clerk shall reopen this action. By
7 permitting the filing of an amended petition and lifting the stay, the court does not intend to
8 foreclose respondent from asserting any procedural defenses (e.g., unexhausted claims or
9 untimeliness) if such defenses are warranted under the facts of this case. The court notes that
10 respondent has not yet been served with any documents in this action and therefore has not yet
11 had an opportunity to raise procedural defenses to petitioner's claims.

12 IT IS SO ORDERED.

13 DATED: June 26, 2006



SUSAN ILLSTON
United States District Judge