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28**NOT FOR CITATION**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

QUINCY ROBERTSON,

Petitioner,

No. C 05-3103 PJH

v.

D.L RUNNELS, Warden,

Respondent.

**ORDER TO SHOW CAUSE  
AND GRANTING IFP APPLICATION**


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Petitioner Quincy Robertson ("Robertson"), a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**BACKGROUND**

On February 7, 2001, Robertson was convicted of second degree murder and assault with infliction of great bodily injury, and was found to have personally used a firearm in commission of the offenses, by a jury in the Alameda County Superior Court in the State of California. He was sentenced to forty years to life in prison. Robertson unsuccessfully appealed his conviction to the California Court of Appeal, which affirmed the judgment on June 30, 2003. The California Supreme Court subsequently denied Robertson's petition for review on August 19, 2004. He filed the instant federal habeas petition on August 1, 2005.

**DISCUSSION****A. Legal Standard**

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). It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

**B. Petitioner's Legal Claims**

1 Petitioner seeks federal habeas corpus relief, raising two claims: (1) that he was  
2 deprived of his Sixth Amendment right to jury trial and his due process rights when the trial  
3 court allowed the jury to return a guilty verdict based on the second degree felony murder  
4 theory; and (2) that his Fifth Amendment rights were violated when the trial court denied his  
5 motion to suppress his confession. Liberally construed, the claims appear colorable under 28  
6 U.S.C. § 2254 and merit an answer from respondents.

7 **C. IFP Application**

8 Good cause appearing, Robertson’s application for in forma pauperis status is  
9 GRANTED. See 28 U.S.C. § 1915(a).

10 **CONCLUSION**

11 For the foregoing reasons and for good cause shown

12 1. The clerk shall serve by certified mail a copy of this order and the petition and all  
13 attachments thereto upon respondents. The clerk shall also serve a copy of this order on  
14 petitioner.

15 2. Respondents shall file with the court and serve on petitioner, within 60 days of  
16 the date of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
17 Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.  
18 Respondent shall file with the answer and serve on petitioner a copy of all portions of the  
19 administrative record that are relevant to a determination of the issues presented by the  
20 petition.

21 3. If the petitioner wishes to respond to the answer, he shall do so by filing a  
22 traverse with the court and serving it on respondent within 30 days of his receipt of the answer.

23  
24 **IT IS SO ORDERED.**

25 Dated: August 15, 2005

  
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26 PHYLIS J. HAMILTON  
United States District Judge