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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JESSE ZUNIGA,

Petitioner,

No. C 07-4319 PJH (PR)

vs.

TOM FELKER, Warden,

Respondent.

**ORDER TO SHOW CAUSE;  
GRANT OF LEAVE TO  
PROCEED IN FORMA  
PAUPERIS**

Petitioner, a California prisoner currently incarcerated at High Desert State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also requests leave to proceed in forma pauperis.

Venue is proper because the conviction was obtained in xxx County, which is in this district. See 28 U.S.C. § 2241(d).

**BACKGROUND**

A jury found defendant guilty of two counts of first degree residential robbery, while acting in concert with others, and for the benefit of, or in association with, a criminal street gang, see Cal. Penal Code §§ 213(a)(1)(A); 186.22(b)(4), and one count of assault with a deadly weapon, see *id.* at § 245(a)(1)). The jury found that defendant personally used a firearm during the robberies and the assault. See *id.* at §§ 12022.53(b) and (e)(1), 12022.5, 1203.06. Defendant was sentenced to a total term of ten years plus fifteen years to life. *People v. Zuniga*, 2007 WL 576138, \*1 (Cal. App. 2007). The California Court of Appeal affirmed and the California Supreme Court denied review.

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**United States District Court**  
For the Northern District of California

1 **DISCUSSION**

2 **A. Standard of Review**

3 This court may entertain a petition for a writ of habeas corpus "in behalf of a person  
4 in custody pursuant to the judgment of a State court only on the ground that he is in  
5 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §  
6 2254(a). It shall "award the writ or issue an order directing the respondent to show cause  
7 why the writ should not be granted, unless it appears from the application that the applicant  
8 or person detained is not entitled thereto." *Id.* § 2243.

9 Habeas corpus petitions must meet heightened pleading requirements. *McFarland*  
10 *v. Scott*, 512 U.S. 849, 856 (1994). A petition must "specify all the grounds for relief" and  
11 set forth "facts supporting each of the grounds thus specified." Rule 2(c), Rules Governing  
12 Section 2254 Cases in the Federal District Courts, 28 U.S.C. foll. § 2254.

13 **B. Legal Claims**

14 As grounds for federal habeas relief, petitioner asserts that: (1) admission of certain  
15 hearsay testimony violated his Confrontation Clause rights as described in *Crawford v.*  
16 *Washington*, 541 U.S. 36 (2004); (2) his Confrontation Clause rights were violated by  
17 admission of evidence of the guilty pleas of confederates; (3) introduction of the guilty pleas  
18 violated section 352 of the California Rules of Evidence; and (4) the trial court's giving an  
19 instruction regarding failure to disclose alibi witnesses violated California law.

20 Issues three and four involve only issues of state law, which cannot be the basis for  
21 federal habeas relief. See *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Those issues  
22 will be dismissed. The other two issues are sufficient to require a response.

23 **CONCLUSION**

24 For the foregoing reasons and for good cause shown,

25 1. Leave to proceed in forma pauperis (doc 2) is **GRANTED**.

26 2. Petitioner's issues three and four are **DISMISSED**.

27 3. The clerk shall serve by regular mail a copy of this order and the petition and all  
28 attachments thereto on respondent and respondent's attorney, the Attorney General of the

1 State of California. The clerk also shall serve a copy of this order on petitioner.

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


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

10 5. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
11 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
12 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court  
13 and serve on respondent an opposition or statement of non-opposition within thirty days of  
14 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
15 within fifteen days of receipt of any opposition.

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

22 **IT IS SO ORDERED.**

23 Dated: August 27, 2007.

  
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PHYLLIS J. HAMILTON  
United States District Judge

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