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

FIDEL C. HERNANDEZ,)	No. C 08-2539 JSW (PR)
Petitioner,)	
vs.)	ORDER TO SHOW CAUSE
MATHEW KREMER, Warden,)	
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 his state court conviction. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted of second degree murder plus use of a weapon in Santa Clara Superior Court. The trial court sentenced him on December 2, 2005, to a term of 15 years to life in state prison. Petitioner’s appeal to the California Court of Appeal was denied. The California Supreme Court denied Petitioner’s petition for review in 2007. Petitioner subsequently filed state collateral challenges to the conviction. Finally, he filed the instant federal habeas petition on May 20, 2008.

1 **DISCUSSION**

2 I 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).

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

10 II Legal Claims

11 The petition raises the following ground for relief: (1) Petitioner’s statement was
12 coerced and was taken in violation of his *Miranda* rights; (2) the admission of a witnesses
13 statement violated his confrontation rights; (3) the admission of the testimony of three
14 witnesses deemed unavailable without adequate investigation violated his confrontation
15 rights; (4) there was insufficient evidence to sustain the convictions; (5) prosecutorial
16 misconduct; (6) ineffective assistance of trial counsel; and (7) ineffective assistance of
17 appellate counsel. Petitioner’s request for an evidentiary hearing is denied without
18 prejudice to the Court’s *sua sponte* reconsideration when considering the merits of the
19 petition. Liberally construed, it does not appear from the face of the petition that
20 Petitioner is not entitled to relief on his claims. Accordingly, Respondent is ordered to
21 respond to the petition as set forth below.

22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown,

24 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
25 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of
26 the State of California. The Clerk also shall serve a copy of this order on Petitioner.

27 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
28

1 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
2 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
3 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
4 portions of the state trial record that have been transcribed previously and that are relevant
5 to a determination of the issues presented by the petition. If Petitioner wishes to respond
6 to the answer, he shall do so by filing a traverse with the Court and serving it on
7 Respondent within **thirty (30)** days of the date the answer is filed.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
9 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
10 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
11 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
12 days of the date the motion is filed, and Respondent shall file with the Court and serve on
13 Petitioner a reply within **fifteen (15)** days the date the opposition is filed.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
15 the Court informed of any change of address by filing a separate paper captioned "Notice
16 of Change of Address." He must comply with the Court's orders in a timely fashion.
17 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
18 to Federal Rule of Civil Procedure 41(b).

19 IT IS SO ORDERED.

20 DATED: October 1, 2008

21 
22 _____
23 JEFFREY S. WHITE
24 United States District Judge
25
26
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 FIDEL C. HERNANDEZ,
6
7 Plaintiff,

Case Number: CV08-02539 JSW

CERTIFICATE OF SERVICE

8 v.

9 MATHEW KREMER et al,
10 Defendant.
_____ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on October 1, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Fidel C. Hernandez
18 Folsom State Prison
19 Prisoner Id F-09157
20 P.O. Box 950
21 B1-C5-02
22 Folsom, CA 95763

Dated: October 1, 2008


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk