



1 sentencing enhancements. Doc. # 1 at 2.

2 On August 13, 2008, the California Supreme Court denied  
3 his Petition for Writ of Habeas Corpus.

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5 II

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

14 Petitioner seeks federal habeas corpus relief on the  
15 grounds that: (1) he was denied his Sixth Amendment right to the  
16 effective assistance of counsel; and (2) because his convictions  
17 exposed him only to the middle term sentence as to each crime,  
18 imposition of the upper term sentence, without his admission of any  
19 aggravating facts or waiver of jury trial rights, violated his Sixth  
20 and Fourteenth Amendment rights under Cunningham v. California, 549  
21 U.S. 270, 293 (2007) (holding that California's Determinate  
22 Sentencing Law violates the Sixth Amendment because it authorizes  
23 the judge, not the jury, to find the facts permitting an upper term  
24 sentence); see also Blakely v. Washington, 542 U.S. 296, 310 (2004)  
25 ("When a defendant pleads guilty, the State is free to seek judicial  
26 sentence enhancements so long as the defendant either stipulates to  
27 the relevant facts or consents to judicial factfinding").

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1           Liberal­ly construed, Petitioner's claims appear cognizable  
2 under § 2254 and merit an Answer from Respondent. See Zichko v.  
3 Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must  
4 construe pro se petitions for writs of habeas corpus liberally).

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III

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For the foregoing reasons and for good cause shown,

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1. The Clerk shall serve by certified mail a copy of  
9 this Order and the Petition, and all attachments thereto, on  
10 Respondent and Respondent's attorney, the Attorney General of the  
11 State of California. The Clerk also shall serve a copy of this  
12 Order on Petitioner.

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2. Respondent shall file with the Court and serve on  
14 Petitioner, within 60 days of the issuance of this Order, an Answer  
15 conforming in all respects to Rule 5 of the Rules Governing Section  
16 2254 Cases, showing cause why a Writ of Habeas Corpus should not be  
17 granted. Respondent shall file with the Answer and serve on  
18 Petitioner a copy of all portions of the state trial record that  
19 have been transcribed previously and that are relevant to a  
20 determination of the issues presented by the Petition.

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If Petitioner wishes to respond to the Answer, he shall do  
22 so by filing a Traverse with the Court and serving it on Respondent  
23 within 30 days of his receipt of the Answer.

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3. In lieu of an Answer, Respondent may file a Motion to  
25 Dismiss on procedural grounds, as set forth in the Advisory  
26 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.  
27 If Respondent files such a motion, Petitioner shall file with the

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1 Court and serve on Respondent an Opposition or Statement of  
2 Non-Opposition within 30 days of receipt of the motion, and  
3 Respondent shall file with the Court and serve on Petitioner a Reply  
4 within 15 days of receipt of any Opposition.


5 4. Petitioner is reminded that all communications with  
6 the Court must be served on Respondent by mailing a true copy of the  
7 document to Respondent's counsel. Petitioner also must keep the  
8 Court and all parties informed of any change of address.

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IT IS SO ORDERED.

DATED

04/03/09



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THELTON E. HENDERSON  
United States District Judge