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NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGELO ANTONIO ESCALANTE )  
SOLANO, )

Petitioner, )

vs. )

ROBERT A. HOREL, Warden, )

Respondent. )

No. C 08-4664 JF (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding pro se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.

**STATEMENT**

On June 28, 2006, Petitioner was sentenced to a term of fifteen years-to-life in state prison after his conviction for second degree murder in San Mateo County Superior Court. The conviction and sentence were affirmed by the California Court of Appeal, and the California Supreme Court denied the petition for review.

**DISCUSSION**

**A. Standard of Review**

This Court may entertain a petition for writ of habeas corpus “in behalf of a person

1 in custody pursuant to the judgment of a state court only on the ground that he is in  
2 custody in violation of the Constitution or laws or treaties of the United States.” 28  
3 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

4 A district court shall “award the writ or issue an order directing the respondent to  
5 show cause why the writ should not be granted, unless it appears from the application that  
6 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

7 **B. Petitioner’s Claims**

8 As grounds for federal habeas relief, Petitioner claims that the trial court violated  
9 his right to due process by failing to instruct the jury that an accomplice’s testimony must  
10 be corroborated and viewed with caution. Liberally construed, Petitioner’s claim is  
11 cognizable under § 2254. The Court orders Respondent to show cause why the petition  
12 should not be granted.

13 **CONCLUSION**

14 1. The Clerk shall serve by mail a copy of this order and the petition  
15 and all attachments thereto upon the Respondent and the Respondent’s attorney, the  
16 Attorney General of the State of California. The Clerk shall also serve a copy of this  
17 order on the Petitioner.

18 2. Respondent shall file with the Court and serve on Petitioner, **within ninety**  
19 **days** of the date this order is filed, an answer conforming in all respects to Rule 5 of the  
20 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
21 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of  
22 all portions of the trial record that have been transcribed previously and that are relevant  
23 to a determination of the issues presented by the petition.

24 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
25 with the Court and serving it on Respondent **within thirty days** of the date the petition is  
26 filed.

27 3. Alternatively, Respondent may, within **ninety days** of the date this order is  
28 filed, file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in

1 the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If  
2 Respondent files such a motion, Petitioner shall file with the Court and serve on  
3 Respondent an opposition or statement of non-opposition **within thirty days** of the date  
4 the motion is filed, and Respondent **shall** file with the court and serve on Petitioner a  
5 reply **within fifteen days** of the date the opposition is filed..

6 4. It is Petitioner’s responsibility to prosecute this case. Petitioner is reminded  
7 that all communications with the Court must be served on respondent by mailing a true  
8 copy of the document to Respondent’s counsel. Petitioner must keep the Court and all  
9 parties informed of any change of address by filing a separate paper captioned “Notice of  
10 Change of Address.” He must comply with the Court’s orders in a timely fashion.  
11 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
12 to Federal Rule of Civil Procedure 41(b).

13 IT IS SO ORDERED.

14 DATED: 11/20/08

  
15 JEREMY FOCHEL  
United States District Judge