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

MICHAEL J. RHINES,
Petitioner,

vs.

A J. YATES, Warden,
Respondent.

) No. C 08-5433 JSW (PR)

)
) **ORDER TO SHOW CAUSE;**
) **GRANTING LEAVE TO PROCEED *IN***
) ***FORMA PAUPERIS***

)
) (Docket No. 3)
)
)

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 filed a motion to proceed *in forma pauperis*, which is now GRANTED (docket no. 3). This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted of corporal injury on spouse, assault with a deadly weapon, as well as prison priors and strike prior enhancement in Santa Clara County Superior Court in 2004. The trial court sentenced him on August 27, 2004, to a term of 45 years-to-life in state prison. Petitioner’s appeal to the California Court of Appeal was denied in 2005. Petitioner later filed collateral challenges to his conviction in the state courts and his most recent petition in the California Supreme Court was denied on October 28, 2008. Finally, he filed the instant federal habeas petition in this

1 Court on December 3, 2008.

2 **DISCUSSION**

3 I Standard of Review

4 This court may entertain a petition for a writ of habeas corpus “in behalf of a person
5 in custody pursuant to the judgment of a State court only on the ground that he is in
6 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
7 § 2254(a).

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

11 II Legal Claims

12 The petition raises the following ground for relief: 1) the evidence presented at
13 trial was insufficient in violation of Petitioner’s due process rights; and, (2) appellate
14 counsel subjected Petitioner to ineffective assistance of counsel. Liberally construed, it
15 does not appear from the face of the petition that Petitioner is not entitled to relief on his
16 claims. Accordingly, Respondent is ordered to respond to the petition as set forth below.

17 **CONCLUSION**

18 For the foregoing reasons and for good cause shown,

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

22 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
23 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
24 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
25 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
26 portions of the state trial record that have been transcribed previously and that are relevant
27 to a determination of the issues presented by the petition. If Petitioner wishes to respond
28

1 to the answer, he shall do so by filing a traverse with the Court and serving it on
2 Respondent within **thirty (30)** days of the date the answer is filed.

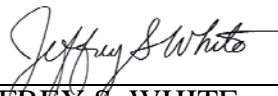
3 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
4 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
5 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
6 and serve on Respondent an opposition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

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

14 This order terminates Docket No. 3.

15 IT IS SO ORDERED.

16 DATED: June 15, 2009

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19 JEFFREY S. WHITE
20 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MICHAEL J. RHINES,
6
7 Plaintiff,

Case Number: CV08-05433 JSW

CERTIFICATE OF SERVICE

8 v.


9 A.J. YATES 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 June 15, 2009, 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 Michael J. Rhines
18 Pleasant Valley State Prison
19 V47193
20 P.O. Box 8503
21 Coalinga, CA 93210

Dated: June 15, 2009


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