

1 granted.

2 **BACKGROUND**

3 According to the petition, Petitioner was convicted of first degree murder, discharge
4 of a firearm and being a felon in possession of a firearm in San Francisco County Superior
5 Court in 2005. The trial court sentenced him to two terms of 25 years-to-life plus 2 years
6 in state prison. Petitioner’s appeal to the California Court of Appeal was denied and his
7 petition for review in the California Supreme Court were denied in 2007. Petitioner later
8 filed a collateral challenge to his conviction in the California Supreme Court which was
9 denied in 2009. He filed the instant federal habeas petition in this Court on January 9,
10 2009.

11 **DISCUSSION**

12 I Standard of Review

13 This court may entertain a petition for a writ of habeas corpus “in behalf of a person
14 in custody pursuant to the judgment of a State court only on the ground that he is in
15 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
16 § 2254(a).

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

20 II Legal Claims

21 The petition raises the following ground for relief: 1) ineffective assistance of
22 counsel; and, (2) the trial court violated Petitioner’s rights to due process and
23 confrontation by improperly limiting impeachment of a witness. Liberally construed, it
24 does not appear from the face of the petition that Petitioner is not entitled to relief on his
25 claims. Accordingly, Respondent is ordered to respond to the petition as set forth below.

26 **CONCLUSION**

27 For the foregoing reasons and for good cause shown,

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MICHAEL DAVID PEREZ,
6 Plaintiff,
7

Case Number: CV09-00113 JSW

CERTIFICATE OF SERVICE

8 v.

9 LARRY SMALL 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 August 11, 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
receptacle located in the Clerk's office.

16 Michael David Perez
17 T90067
18 Calipatria State Prison
Calipatria, CA 92233

19 Dated: August 11, 2009



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