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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 DAVID A. JOHNSON,)

No. C 09-0937 JSW (PR)

9 Petitioner,)

ORDER TO SHOW CAUSE

10 vs.)

11 MIKE MARTEL, Warden,)

12 Respondent.)
13 _____)

14 **INTRODUCTION**

15 Petitioner, a prisoner of the State of California, has filed a habeas corpus petition
16 pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state court
17 conviction. Petitioner has paid the filing fee. This order directs Respondent to show cause
18 why the petition should not be granted.
19

20 **BACKGROUND**

21 According to the petition, Petitioner was convicted of continuous sexual abuse of a
22 child as well as prior conviction allegations in Marin County Superior Court in 2005. The
23 trial court sentenced him on February 17, 2006, to a term of 17 years in state prison.
24 Petitioner's appeal to the California Court of Appeal was denied in 2006 and his petition
25 for review in the California Supreme Court was denied in 2007. Petitioner later filed
26 collateral challenges to his conviction in the state courts and his most recent petition in the
27 California Supreme Court was denied in 2008. Finally, he filed the instant federal habeas
28 petition in this Court on March 4, 2009.

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 admissions to the
12 police, admitted at trial, were obtained in violation of his constitutional rights, (2)
13 admission of certain inflammatory evidence violated Petitioner’s due process rights; and
14 (3) Petitioner was sentenced in violation of *Blakely v. Washington*, 542 U.S. 296 (2004).
15 Liberally construed, it does not appear from the face of the petition that Petitioner is not
16 entitled to relief on his claims. Accordingly, Respondent is ordered to respond to the
17 petition as set forth below.

18 **CONCLUSION**

19 For the foregoing reasons and for good cause shown,

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

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

1 to a determination of the issues presented by the petition. If Petitioner wishes to respond
2 to the answer, he shall do so by filing a traverse with the Court and serving it on
3 Respondent within **thirty (30)** days of the date the answer is filed.


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

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

15 This order terminates Docket No. 3.

16 IT IS SO ORDERED.

17 DATED: June 11, 2009

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

5 DAVID A. JOHNSON,
6 Plaintiff,
7

Case Number: CV09-00937 JSW

CERTIFICATE OF SERVICE

8 v.


9 MIKE MARTEL 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 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
16 receptacle located in the Clerk's office.

17 David A. Johnson
18 P.O. Box 409040
19 T17006
Ione, CA 95640

20 Dated: June 11, 2009


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