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United States District Court
For the Northern District of California

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

CORY MOSBY,
Petitioner,
v.
JAMES A. YATES, Warden of Pleasant
Valley State Prison,
Respondent.

No. C 09-1667 MMC

**ORDER OF SERVICE; DIRECTING
RESPONDENT TO FILE RESPONSE TO
PETITION FOR WRIT OF HABEAS
CORPUS**

Before the Court is petitioner Cory Mosby's petition for a writ of habeas corpus, filed April 15, 2009, pursuant to 28 U.S.C. § 2254.

BACKGROUND

The following facts are taken from the petition, and are assumed true for purposes of the instant order.

Petitioner, a California prisoner currently incarcerated at the Pleasant Valley State Prison, was convicted of carjacking, kidnapping, assault, and robbery, with enhancements for the use of a firearm and an assault weapon. (See Pet. at 2-3.) On January 20, 2006, petitioner was sentenced to a prison term of 26 years, and, on March 3, 2006, petitioner was resentenced to a term of 31 years and four months.¹ (See *id.* at 3.) Petitioner

¹On January 26, 2006, the trial court recalled its initial sentence "on the ground that it had failed to impose sentence on all counts." (See Pet. at 3.)

1 appealed to the California Court of Appeal; on April 13, 2006, the Court of Appeal affirmed
2 the judgment against him. (See id. at 5.) Thereafter, petitioner sought review in the
3 California Supreme Court; on January 16, 2008, the Supreme Court denied review. (See
4 id.)

5 DISCUSSION

6 A. Legal Standard

7 A district court may entertain a petition for a writ of habeas corpus “in behalf of a
8 person in custody pursuant to the judgment of a State court only on the ground that he is in
9 custody in violation of the Constitution or laws or treaties of the United States.” See 28
10 U.S.C. § 2254(a). A district court shall “award the writ or issue an order directing the
11 respondent to show cause why the writ should not be granted, unless it appears from the
12 application that the applicant or person detained is not entitled thereto.” See 28 U.S.C.
13 § 2243. Summary dismissal is appropriate only where the allegations in the petition are
14 “vague or conclusory,” “palpably incredible,” or “patently frivolous or false.” See Hendricks
15 v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison, 431 U.S. 63,
16 75-76 (1977)).

17 B. Petitioner’s Claims

18 In his petition, petitioner makes the following claims: (1) petitioner “was denied his
19 federal due process right by the admission of evidence of pretrial identifications . . . that
20 were the product of procedures that [were] impermissibly suggestive” (see Pet. at 11); (2)
21 petitioner “was denied his right of confrontation under the Sixth Amendment and his right to
22 present a defense as guaranteed by the due process, confrontation and compulsory
23 process clauses [of the] Sixth and Fourteenth Amendment[s] by the exclusion of evidence
24 of bias against him on the part of the Redwood City police department” (see id. at 14); and
25 (3) petitioner “was denied his rights under the due process clause of the [F]ourteenth
26 [A]mendment and the [c]ompulsory [p]rocess and [c]onfrontation clauses of the Sixth
27 Amendment . . . by the court’s rulings on [petitioner’s] interrogation by police in which the
28 court admitted [petitioner’s] statements offering to assist police in other prosecutions but

1 limited statements by police threatening [petitioner] with life imprisonment” (see id. at 16).

2 The Court cannot say, from the face of the pleadings, that the claims alleged by
3 petitioner are vague, conclusory, palpably incredible, or patently frivolous or false.

4 Consequently, respondent will be directed to file a response to the petition. Specifically,
5 respondent will be directed to file either a motion to dismiss, if such a motion is warranted,
6 or, alternatively, an answer, attaching thereto a copy of all portions of the state record
7 relevant to a determination of the issues presented by the petition, as well as a supporting
8 memorandum of points and authorities.

9 **CONCLUSION**

10 In light of the foregoing:

11 1. The Clerk of the Court shall serve by certified mail a copy of this order, the
12 Petition, and the Memorandum of Points and Authorities upon respondent and
13 respondent’s attorney, the Attorney General for the State of California.

14 2. Respondent shall file, within 30 days of the date of this order, either a motion to
15 dismiss, noticed for hearing pursuant to Civil Local Rule 7-2, or an answer and supporting
16 memorandum of points and authorities.

17 3. In the event respondent files an answer, petitioner may, within 30 days thereafter,
18 file a traverse.

19 **IT IS SO ORDERED.**

20 Dated: May 14, 2009


MAXINE M. CHESNEY
United States District Judge