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

DIANNA PRESTON, aka DONNA
MAE PRESTON,

No. C 09-2262 WHA (PR)

ORDER TO SHOW CAUSE

Petitioner,

v.

MARY LATTIMER, Warden,

Respondent.

_____ /

INTRODUCTION

Petitioner, a California prisoner currently incarcerated at the Central California Women’s Facility, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. She has filed a timely amended petition.

STATEMENT

A jury convicted petitioner of first degree murder, *see* Cal. Penal Code 187(a), with personal use of a firearm, *see id.* at 12022.53(d), and the special circumstance of lying in wait, *see id.* at 190.2(a)(15). She was sentenced to a term of life without parole. Her conviction was affirmed with a minor change on direct appeal by the California Court of Appeal, and the California Supreme Court denied review. Petitioner also filed state habeas petitions, all of which were denied.

United States District Court
For the Northern District of California

1 with attachments upon respondent and respondent's attorney, the Attorney General of the State
2 of California. The clerk also shall serve a copy of this order on petitioner.

3 2. Respondent shall file with the court and serve on petitioner, within ninety days of the
4 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
5 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
6 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
7 trial record that have been transcribed previously and that are relevant to a determination of the
8 issues presented by the petition.

9 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
10 court and serving it on respondent within thirty days of the date the answer is filed.

11 3. Respondent may file, within ninety days, a motion to dismiss on procedural grounds
12 in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
13 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the
14 court and serve on respondent an opposition or statement of non-opposition within thirty days
15 of the date the motion is filed, and respondent shall file with the court and serve on petitioner a
16 reply within fifteen days of the date any opposition is filed.

17 4. Petitioner is reminded that all communications with the court must be served on
18 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must
19 keep the court informed of any change of address and must comply with the court's orders in a
20 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
21 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772
22 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

23 **IT IS SO ORDERED.**

24 Dated: October 13, 2009.

25 
26 _____
27 WILLIAM ALSUP
28 UNITED STATES DISTRICT JUDGE