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

ANDRE COMBS,)	No. C 09-2643 JSW (PR)
)	
Petitioner,)	
)	ORDER TO SHOW CAUSE
vs.)	
)	
RON BARNES, Warden,)	
)	
Respondent.)	
_____)	

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. Although Petitioner did not identify a proper Respondent in his petition, the Court has *sua sponte* joined Warden Ron Barnes as the Respondent in this action pursuant to Federal Rule of Civil Procedure 19(a), *see Silveyra v. Moschorak*, 989 F.2d 1012, 1015 n.3 (9th Cir. 1993) (citing *CP Nat'l Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 912 (9th Cir. 1991)). Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition, Petitioner was convicted after a jury trial in San Mateo County Superior Court of murder, as well as certain enhancements. He was sentenced to 15 years to life in state prison. Petitioner's appeal to the California Court of Appeal and his petition for review in the California Supreme Court were denied in 2008. Petitioner filed the instant federal habeas petition in this Court on June 14, 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 Petitioner raises the following federal ground for relief in the petition: 1) Petitioner
12 was deprived of his right to present a defense by the exclusion of evidence of the victim’s
13 mental illness; and 2) the trial court’s altering of a jury instruction violated Petitioner’s
14 rights to due process and a fair trial. Petitioner’s claim one in the petition is dismissed, as
15 it does not present a federal constitutional claim for relief. Liberally construed, it does not
16 appear from the face of the petition that Petitioner is not entitled to relief on the other
17 claims set forth above. Accordingly, Respondent is ordered to respond to the petition as
18 set forth below.

19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown,

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

24 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
25 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
26 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
27 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
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1 portions of the state trial record that have been transcribed previously and that are relevant
2 to a determination of the issues presented by the petition. If Petitioner wishes to respond
3 to the answer, he shall do so by filing a traverse with the Court and serving it on
4 Respondent within **thirty (30)** days of the date the answer is filed.

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

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

16 This order terminates Docket No. 2.

17 IT IS SO ORDERED.

18 DATED: October 26, 2009

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

5 ANDRE COMBS,
6

7 Plaintiff,

8 v.

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA et al,

11 Defendant.
_____ /

Case Number: CV09-02643 JSW

CERTIFICATE OF SERVICE

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on October 26, 2009, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
17 delivery receptacle located in the Clerk's office.

18 Andre Combs
19 F51982
20 P.O. Box 2210
21 Susanville, CA 96127

22 Dated: October 26, 2009


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