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

LESTER LAMOUNT POLK,	)	No. C 09-3097 JSW (PR)
Petitioner,	)	
vs.	)	<b>ORDER TO SHOW CAUSE</b>
LARRY SMALL, 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 conviction. 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 and supporting documents, Petitioner was convicted after a trial before a judge in Monterey County Superior Court of murder, as well as other crimes and was sentenced to life in state prison without the possibility of parole, as well as a determinate term of 25 years running concurrently. Petitioner’s appeal to the California Court of Appeal and his petition for review in the California Supreme Court were ultimately denied in 1994. Petitioner filed the instant federal habeas petition in the United States District Court on June 16, 2009 and the matter was transferred here on July 6, 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 a jury trial in that he did not expressly waive his right in  
13 writing or orally in court; 2) Petitioner was deprived of a jury trial on the special  
14 circumstances allegations; and 3) ineffective assistance of trial and appellate counsel.  
15 Liberally construed, it does not appear from the face of the petition that Petitioner is not  
16 entitled to relief on the other claims set forth above. Accordingly, Respondent is ordered  
17 to respond to the 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 IT IS SO ORDERED.

16 DATED: November 4, 2009

17   
18 JEFFREY S. WHITE  
United States District Judge