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

ANTHONY L. ADRAGNA, T-68096,)	
)	
Petitioner,)	No. C 10-1701 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
FERNANDO GONZALEZ, Warden,)	
)	
Respondent.)	
_____)	

Petitioner, a state prisoner at the California Correctional Institution in Tehachapi, has filed a pro se amended petition for a writ of habeas corpus under 28 U.S.C. § 2254.

BACKGROUND

After a jury trial resulted in a hung jury, petitioner pleaded guilty to two counts of lewd acts upon a child by force and one count of first degree burglary in Santa Clara County Superior Court. On September 9, 2002, he was sentenced to 20 years in state prison and ordered to pay \$10,000 in restitution. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and has been seeking collateral relief from the state courts ever since. It appears that his last state habeas petition was denied by the California Court of Appeal on May 18, 2009.

1 **DISCUSSION**

2 A. Standard of Review

3 This court may entertain a petition for a writ of habeas corpus "in behalf
4 of a person in custody pursuant to the judgment of a State court only on the
5 ground that he is in custody in violation of the Constitution or laws or treaties of
6 the United States." 28 U.S.C. § 2254(a).

7 It shall "award the writ or issue an order directing the respondent to show
8 cause why the writ should not be granted, unless it appears from the application
9 that the applicant or person detained is not entitled thereto." Id. § 2243.

10 B. Claims

11 Petitioner seeks federal habeas corpus relief by raising three claims: (1)
12 unlawful sentence, (2) ineffective assistance of counsel and (3) prosecutorial
13 misconduct. Liberally construed, the claims appear minimally cognizable under
14 § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d
15 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs
16 of habeas corpus liberally).

17 **CONCLUSION**

18 For the foregoing reasons and for good cause shown,

19 1. The clerk shall serve by certified mail a copy of this order and the
20 amended petition (docket # 11) and all attachments thereto on respondent and
21 respondent's attorney, the Attorney General of the State of California. The clerk
22 also shall serve a copy of this order on petitioner.

23 2. Respondent shall file with the court and serve on petitioner, within
24 60 days of the issuance of this order, an answer conforming in all respects to Rule
25 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
26 habeas corpus should not be granted. Respondent shall file with the answer and
27

1 serve on petitioner a copy of all portions of the state trial record that have been
2 transcribed previously and that are relevant to a determination of the issues
3 presented by the petition.

4 If petitioner wishes to respond to the answer, he shall do so by filing a
5 traverse with the court and serving it on respondent within 30 days of his receipt
6 of the answer.

7 3. Respondent may file a motion to dismiss on procedural grounds in
8 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
9 Rules Governing Section 2254 Cases. If respondent files such a motion,
10 petitioner shall file with the court and serve on respondent an opposition or
11 statement of non-opposition within 30 days of receipt of the motion, and
12 respondent shall file with the court and serve on petitioner a reply within 15 days
13 of receipt of any opposition.

14 5. Petitioner is reminded that all communications with the court must
15 be served on respondent by mailing a true copy of the document to respondent's
16 counsel. Petitioner must also keep the court and all parties informed of any
17 change of address.

18 SO ORDERED.

19 DATED: August 19, 2010



CHARLES R. BREYER
United States District Judge