

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

BENNIE LEE ALDER, G-53356,)	
)	
Petitioner,)	No. C 10-2920 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
KELLY HARRINGTON, Warden,)	(Docket # 5, 7 & 10)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at Kern Valley State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

Petitioner was convicted by a jury in Alameda County Superior Court of kidnapping and committing multiple sex offenses against two different victims. Because he had an extensive criminal record, including three prior strike convictions, on March 13, 2009, the court sentenced him to 180 years to life in state prison. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on May 12, 2010 denied review of a petition allegedly raising the same claims raised here.

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 various claims of
12 instructional error. Liberally construed, the claims appear minimally cognizable
13 under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247
14 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for
15 writs of habeas corpus liberally).

16 **CONCLUSION**

17 For the foregoing reasons and for good cause shown,

18 1. Petitioner's request to proceed in forma pauperis (docket # 5, 7 &
19 10) is GRANTED.

20 2. The clerk shall serve a copy of this order and the petition and all
21 attachments thereto on respondent and respondent's attorney, the Attorney
22 General of the State of California. The clerk also shall serve a copy of this order
23 on petitioner.

24 3. Respondent shall file with the court and serve on petitioner, within
25 60 days of the issuance of this order, an answer conforming in all respects to Rule
26 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
27

1 habeas corpus should not be granted. Respondent shall file with the answer and
2 serve on petitioner a copy of all portions of the state trial record that have been
3 transcribed previously and that are relevant to a determination of the issues
4 presented by the petition.

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

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

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

19 SO ORDERED.

20 DATED: Nov. 9, 2010



21 CHARLES R. BREYER
22 United States District Judge
23
24
25
26
27