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

CHARLES WILLIAMS,

Petitioner,

v.

MATTHEW CATE,

Respondent.

No. C 10-4277 WHA (PR)

**ORDER TO SHOW CAUSE;  
GRANTING LEAVE TO PROCEED  
IN FORMA PAUPERIS**

**INTRODUCTION**

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. He has applied for leave to proceed in forma pauperis.

**STATEMENT**

Pursuant to a conviction in 2007 in Santa Clara County Superior Court, petitioner was sentenced to a term of 45 years to life plus 12 years in state prison. The California Court of Appeal affirmed the judgment, and the California Supreme Court denied a petition for review.

**ANALYSIS**

**A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading

1 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ  
2 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state  
3 court must “specify all the grounds for relief which are available to the petitioner ... and shall  
4 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of  
5 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not  
6 sufficient, for the petition is expected to state facts that point to a ‘real possibility of  
7 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
8 688, 689 (1st Cir. 1970)).

9 **B. LEGAL CLAIMS**

10 As grounds for federal habeas relief, petitioner claims that (1) he received ineffective  
11 assistance of counsel at trial; (2) he was unable to present evidence challenging the credibility  
12 of the victim, in violation of his right to present favorable evidence and to confront adverse  
13 witnesses; (3) he did not receive a fair trial because of the exclusion of evidence challenging the  
14 testimony of an expert witness; and (4) the trial court “abused its discretion” by not allowing the  
15 defense to present evidence that the expert was biased. Claim numbers three and four both  
16 address the same topic, namely whether the lack of evidence challenging the prosecution’s  
17 expert testimony violated his petitioner’s constitutional rights. As such, the two claims may be  
18 addressed jointly.

19 Petitioner’s claims, when liberally construed, are cognizable.

20 **CONCLUSION**

21 1. The clerk shall mail a copy of this order and the petition with all attachments to the  
22 respondent and the respondent’s attorney, the Attorney General of the State of California. The  
23 clerk shall also serve a copy of this order on the petitioner.

24 2. Respondent shall file with the court and serve on petitioner, within ninety days of the  
25 issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing  
26 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on  
27 the claims found cognizable herein. Respondent shall file with the answer and serve on  
28 petitioner a copy of all portions of the state trial record that have been transcribed previously

1 and that are relevant to a determination of the issues presented by the petition.

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

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

10 4. Petitioner is reminded that all communications with the court must be served on  
11 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must  
12 keep the court informed of any change of address and must comply with the court's orders in a  
13 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
14 pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772  
15 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

16 5. In light of petitioner's lack of money, his request for leave to proceed in forma  
17 pauperis is **GRANTED**.

18 **IT IS SO ORDERED.**

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20 Dated: October 28, 2010.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE