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

MANUEL SALVADOR GARCIA,)	
)	
Petitioner,)	No. C 11-0160 CRB (PR)
)	
vs.)	ORDER REOPENING CASE
)	AND LIFTING STAY; AND
MICHAEL STAINER, Acting Warden,)	ORDER TO SHOW CAUSE
)	
Respondent.)	(Docket # 7 & 8)
_____)	

Petitioner, a state prisoner at the California Correctional Institution in Tehachapi, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and sentence from Contra Costa County Superior Court. He also seeks appointment of counsel.

BACKGROUND

Following a jury trial, the jury convicted petitioner of second degree murder and found two firearm enhancement allegations to be true. On December 8, 2006, the court sentenced petitioner to 40 years to life in state prison.

Petitioner unsuccessfully appealed to the California Court of Appeal and the Supreme Court of California, which denied review on July 22, 2009. He then began seeking collateral relief from the state courts.

1 Petitioner seeks federal habeas corpus relief by raising six claims,
2 including improper admission of evidence, ineffective assistance of counsel and
3 insufficiency of the evidence. Liberally construed, the claims appear cognizable
4 under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247
5 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for
6 writs of habeas corpus liberally).

7 C. Request for Appointment of Counsel

8 Petitioner's motion for appointment of counsel (docket # 8) is DENIED
9 without prejudice. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986)
10 (unless an evidentiary hearing is required, the decision to appoint counsel in
11 habeas corpus proceedings is within the discretion of the district court).
12 Petitioner adequately presented his claims for relief in the petition (albeit with the
13 assistance of another prisoner) and an order to show cause is issuing. Accord
14 Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984) (although petitioner had no
15 background in law, denial of appointment of counsel within discretion of district
16 court where petitioner clearly presented issues in petition and accompanying
17 memorandum). The court will appoint counsel on its own motion if an
18 evidentiary hearing is later required. See Knaubert, 791 F.2d at 728
19 (appointment of counsel mandatory if evidentiary hearing is required).

20 **CONCLUSION**

21 For the foregoing reasons and for good cause shown,

22 1. The clerk shall reopen this matter and serve a copy of this order,
23 and the petition and all attachments thereto, on respondent and respondent's
24 attorney, the Attorney General of the State of California. The clerk also shall
25 serve a copy of this order on petitioner.

26 /

1 2. Respondent shall file with the court and serve on petitioner, within
2 60 days of the issuance of this order, an answer conforming in all respects to Rule
3 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
4 habeas corpus should not be granted. Respondent shall file with the answer and
5 serve on petitioner a copy of all portions of the state trial record that have been
6 transcribed previously and that are relevant to a determination of the issues
7 presented by the petition.

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

11 3. Respondent may file a motion to dismiss on procedural grounds in
12 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
13 Rules Governing Section 2254 Cases. If respondent files such a motion,
14 petitioner must serve and file an opposition or statement of non-opposition not
15 more than 28 days after the motion is served and filed, and respondent must serve
16 and file a reply to an opposition not more than 14 days after the opposition is
17 served and filed.

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

22 SO ORDERED.

23 DATED: June 1, 2012



CHARLES R. BREYER
United States District Judge