

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

LOVELL S. KELLER, G-56168,	)	
	)	
Petitioner,	)	No. C 11-1190 CRB (PR)
	)	
vs.	)	ORDER TO SHOW CAUSE
	)	
M. McDONALD, Warden,	)	(Docket # 6)
	)	
Respondent.	)	
_____	)	

Petitioner, a prisoner incarcerated at High Desert State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Mendocino County Superior Court. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

**BACKGROUND**

Petitioner was convicted by a jury of first degree murder and burglary. The jury also found true the allegation that a knife had ben used in the commission of the murder. On April 28, 2009, petitioner was sentenced to prison for a term of 25 years to life plus one year.

Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which denied review on October 20, 2010.

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 on the ground that the police  
12 violated their duty under California v. Trombetta, 467 U.S. 479 (1984), to  
13 preserve a surveillance video which would have supported his claim that he  
14 killing was the product of provocation rather than premeditation. Liberally  
15 construed, the claim appears cognizable under § 2254 and merits an answer from  
16 respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal  
17 courts must construe pro se petitions for writs of habeas corpus liberally).

18 **CONCLUSION**

19 For the foregoing reasons and for good cause shown,

20 1. Petitioner's motion for leave to proceed in forma pauperis (docket #  
21 6) is DISMISSED as moot because he recently paid the requisite filing fee.

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

26 /

