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**United States District Court**  
For the Northern District of California

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

RODNEY KRALOVETZ,

No. C 11-1552 JSW (PR)

Petitioner,

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

v.

GROUND, Warden,

Respondent.

**(Docket No. 2)**

\_\_\_\_\_ /

**INTRODUCTION**

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction. This order directs Respondent to show cause why the petition should not be granted and grants Petitioner’s request to proceed in forma pauperis.

**BACKGROUND**

In 2007, Petitioner was convicted in Santa Clara County Superior Court of two counts of forcible oral copulation and one count of lewd acts on a child aged 14 or 15. The trial court sentenced him to two consecutive terms of 15-years-to-life in state prison. The California Court of Appeal affirmed on direct appeal, and the California Supreme Court denied a petition for review.

1 DISCUSSION

2 I. Standard of Review

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

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

10 II. Legal Claims

11 As grounds for federal habeas relief, Petitioner claims: (1) that he was deprived of  
12 his right of allocution at sentencing; (2) he received ineffective assistance of counsel in  
13 18 different respects; (3) that he was subjected to cruel and unusual punishment in jail  
14 immediately prior to testifying; (4) the prosecution failed to turn over required discovery,  
15 in two different respects; (4) that his *Miranda* rights were violated in two different  
16 respects; (5) he was subject to vindictive prosecution; (6) that he was charged with  
17 crimes that did not exist; (7) that he was charged and convicted of a crime that had been  
18 dismissed; (8) that he was charged with serving a prior prison term when in fact he had  
19 not served one; (9) that the victim’s statements to the police implicating Petitioner was  
20 coerced by the police; (10) that the prosecution did not prove “force and duress;” (11)  
21 there was insufficient evidence to support the conviction for forcible copulation; (12)  
22 that the trial court failed to instruct the jury on the lesser-included offenses to the counts  
23 of forcible oral copulation; (13) the “one-strike” findings violated his right to due  
24 process in three respects; (14) the jury instructions set forth an inadequate standard of  
25 proof; (15) amendments to the charges violated the applicable statute of limitations; and  
26 (16) the prosecutor committed misconduct in closing argument

27 Petitioner’s claims, when liberally construed, are cognizable.  
28

1 **CONCLUSION**

2 For the foregoing reasons and for good cause shown,

3 1. The Clerk shall serve by certified mail a copy of this order and the petition, and  
4 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General  
5 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

6 2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)**  
7 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
8 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
9 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all  
10 portions of the state trial record that have been transcribed previously and that are relevant  
11 to a determination of the issues presented by the petition. If Petitioner wishes to respond  
12 to the answer, she shall do so by filing a traverse with the Court and serving it on  
13 Respondent within **thirty (30)** days of the date the answer is filed.

14 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on  
15 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to  
16 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,  
17 Petitioner shall file with the Court and serve on Respondent an opposition or statement of  
18 non-opposition within **thirty (30)** days of the date the motion is filed, and Respondent  
19 shall file with the Court and serve on Petitioner a reply within **fifteen (15)** days of the date  
20 any opposition is filed.

21 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
22 the Court informed of any change of address by filing a separate paper captioned "Notice  
23 of Change of Address." She must comply with the Court's orders in a timely fashion.  
24 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
25 to Federal Rule of Civil Procedure 41(b).

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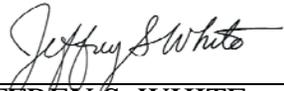
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5. Petitioner's applications for leave to proceed in forma pauperis (docket number 2) is GRANTED in light of Petitioner's lack of funds.

IT IS SO ORDERED.

DATED: May 3, 2011

  
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JEFFREY S. WHITE  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 RODNEY KRALOVETZ,  
6 Plaintiff,

Case Number: CV11-01552 JSW

**CERTIFICATE OF SERVICE**

7 v.

8 GROUNDNS et al,  
9 Defendant.  
10 \_\_\_\_\_/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
12 District Court, Northern District of California.

13 That on May 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
15 delivery receptacle located in the Clerk's office.  
16

17 Rodney T. Kralovetz  
F79317  
18 P.O. Box 705  
Soledad, CA 93960

19 Dated: May 3, 2011



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk