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

TERENCE A. BURTON,)	No. C 11-1607 JSW (PR)
Petitioner,)	ORDER TO SHOW CAUSE
vs.)	
MICHAEL MARTEL, Warden,)	
Respondent.)	

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. He has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

Petitioner was convicted in Santa Clara County Superior Court of resisting arrest and exhibiting a weapon to prevent arrest. The trial court sentenced him to a term of 30 years to life in state prison. The California Court of Appeal affirmed the judgment on appeal, and the California Supreme Court denied a petition for review. Habeas petitions filed in all three levels of the California courts were denied thereafter. Petitioner then filed the instant federal petition.

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

9 II Legal Claims

10 Petitioner claims: (1) that his sentence violated his constitutional right to a jury;
11 and (2) that the use of his prior convictions to enhance his current sentence breaches the
12 plea agreements for those prior convictions and violates due process. Liberally construed,
13 these claims are sufficient to warrant a response from Respondent.

14 **CONCLUSION**

15 For the foregoing reasons and for good cause shown,

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

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

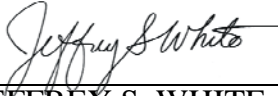
27 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on
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1 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
2 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a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

7 4. It is Petitioner’s responsibility to prosecute this case. Petitioner must keep
8 the Court informed of any change of address by filing a separate paper captioned “Notice
9 of Change of Address.” He must comply with the Court’s orders in a timely fashion.
10 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
11 to Federal Rule of Civil Procedure 41(b).

12 IT IS SO ORDERED.

13 DATED: June 30, 2011

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16 JEFFREY S. WHITE
17 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 TERENCE A. BURTON,
6 Plaintiff,
7

Case Number: CV11-01607 JSW

CERTIFICATE OF SERVICE

8 v.

9 MICHAEL MARTEL et al,
10 Defendant.
11

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

13 That on June 30, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
16 receptacle located in the Clerk's office.

17 Terence A. Burton P58217
18 San Quentin State Prison
19 San Quentin, CA 94974

Dated: June 30, 2011



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

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