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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 LEIF THURSTON CARLSON, Sr.,

No. C 11-02976 CRB

12 Petitioner,

ORDER TO SHOW CAUSE

13 v.

14 ATTORNEY GENERAL, State of California

15 Respondent.
16 _____/

17 Petitioner, who is in the custody of the California Department of Corrections, has filed
18 a petition for a writ of habeas corpus, pursuant to 28 U.S.C. section 2254.¹ Petitioner was
19 convicted in the Superior Court of Contra Costa County of one count of misdemeanor child
20 endangerment in violation of California Penal Code section 273(a)(b).

21 This Court may entertain a petition for a writ of habeas corpus “in behalf of a person
22 in custody pursuant to the judgment of a State court only on the ground that he is in custody
23 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
24 Rose v. Hodges, 423 U.S. 19, 21 (1975).

25 A district court shall “award the writ or issue an order directing the respondent to
26 show cause why the writ should not be granted, unless it appears from the application that the
27 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal
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¹ Petitioner’s sentence was suspended pending his post-conviction challenges. A person is “in custody” for purposes of habeas jurisdiction if he is serving a suspended sentence. See Pearson v. Olivarez, No. C 94-20585 JW, 1995 WL 25316, at *1 (N.D. Cal. Jan. 20, 1995) (citations omitted).

1 is appropriate only where the allegations in the petition are vague or conclusory, palpably
2 incredible, or patently frivolous or false. Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir.
3 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

4 The Court has reviewed the petition and finds good cause to proceed. Accordingly,

- 5 1. The Clerk of the Court shall serve by certified mail a copy of this Order
6 and the petition and all attachments thereto upon the Respondents and
7 the Respondents' counsel, the Attorney General of the State of
8 California. The Clerk shall also serve a copy of this Order on the
9 Petitioner's counsel.
- 10 2. Respondents shall file with this Court and serve upon the Petitioner,
11 within sixty (60) days of the issuance of this Order, an answer
12 conforming in all respects to Rule 5 of the Rules Governing Section
13 2254 Cases, showing cause why a writ of habeas corpus should not be
14 issued. Respondent shall file with the answer a copy of all portions of
15 the state trial and appellate record that have been transcribed previously
16 and that are relevant to a determination of the issues presented by the
17 petition.
- 18 3. If the Petitioner wishes to respond to the answer, he shall do so by filing
19 a traverse with the court and serving it upon the Respondents within
20 thirty (30) days of his receipt of the answer.

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22 **IT IS SO ORDERED.**

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25 Dated: July 6, 2011



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE