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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VICENTE BATALON,
Petitioner,
v.
Mr. GONZALES, Warden,
Respondent.

No. C-11-3810 EMC (pr)

ORDER ON INITIAL REVIEW

INTRODUCTION

Vicente Batalon, an inmate at the California Correctional Institution in Tehachapi, filed this *pro se* action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the Court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases.

BACKGROUND

The petition and attachments thereto provide the following information: Batalon pled no contest and was convicted in Alameda County Superior Court of five counts of committing a lewd act on a dependent adult, *see* Cal. Penal Code § 288(c)(2). In 2007, he was sentenced to ten years in state prison.

It does not appear that Batalon appealed his conviction. He did, however, file habeas petitions in the state courts to challenge his conviction. The California Court of Appeal denied a petition for writ of habeas corpus on May 28, 2010, and the California Supreme Court denied a petition for writ of habeas corpus on February 2, 2011.

1 the petition. If the petition is time-barred, the litigants and court need not expend resources
2 addressing the claims in the petition. Accordingly, pursuant to Rule 4 of the Rules Governing
3 Section 2254 Cases In The United States District Courts, Respondent must either (1) move to
4 dismiss the petition on the ground that it is untimely, or (2) inform the Court that Respondent is of
5 the opinion that a motion to dismiss is unwarranted in this case.

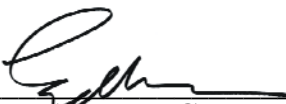
6 **CONCLUSION**

7 Good cause appearing therefor,

- 8 1. The Clerk shall serve by certified mail a copy of this order and the petition upon
9 Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk
10 shall also serve a copy of this order on Petitioner.
- 11 2. Respondent must file with the Court and serve upon Petitioner, on or before
12 **February 3, 2012**, a motion to dismiss the petition or a notice that Respondent is of the opinion that
13 a motion to dismiss is unwarranted.
- 14 3. If Petitioner wishes to oppose the motion to dismiss, he must do so by filing an
15 opposition with the Court and serving it upon Respondent on or before **March 9, 2012**.
- 16 4. Respondent may file and serve a reply on or before **March 26, 2012**.
- 17 5. The motion will be deemed submitted as of the date the reply brief is due. No
18 hearing will be held on the motion. If Respondent notifies the Court that a motion to dismiss is
19 unwarranted or the motion to dismiss is decided against Respondent, the Court will then determine
20 whether to require an answer to the petition.
- 21 6. Petitioner's *in forma pauperis* application is GRANTED. (Docket # 2.)

22
23 **IT IS SO ORDERED.**

24
25 Dated: December 13, 2011

26 
27 EDWARD M. CHEN
28 United States District Judge