

1 unsuccessfully appealed his conviction to the state appellate courts
2 and to the California Supreme Court. Doc. #1 at 3. Petitioner
3 sought post-conviction relief in the California Supreme Court, which
4 was denied on July 27, 2011. Doc. #1 at 4. The instant federal
5 Petition for a Writ of Habeas Corpus followed.

6 II

7 This Court may entertain a petition for a writ of habeas
8 corpus "in behalf of a person in custody pursuant to the judgment of
9 a State court only on the ground that he is in custody in violation
10 of the Constitution or laws or treaties of the United States." 28
11 U.S.C. § 2254(a). It shall "award the writ or issue an order
12 directing the respondent to show cause why the writ should not be
13 granted, unless it appears from the application that the applicant
14 or person detained is not entitled thereto." Id. § 2243.

15 Petitioner seeks federal habeas corpus relief by alleging
16 that:

17 (1) trial counsel Jessica Delgato was ineffective for
18 failing to call certain witnesses (Doc. #1-1 at 3), failing to
19 attack the allegedly improper identification of Petitioner (id.),
20 and tampering with witness Hernandez;

21 (2) trial counsel Kipp Davis was ineffective for failing
22 to address inaccuracies and errors in the testimony provided by
23 witness Hernandez (id. at 5), coercing Petitioner to plead guilty
24 (id. at 5), failing to ensure the chain of custody of a key piece of
25 evidence (camera) (id. at 7), failing to object to the introduction
26 of allegedly prejudicial photos of Petitioner (id. at 9-10), failing
27 to impeach witnesses who lied on the stand (id. at 13), failing to
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1 cross-examine the blood technician who examined Petitioner and the
2 doctor who examined witness Hernandez (id. at 16), and failing to
3 contest the trial court's application of a prior conviction in
4 determining Petitioner's sentence (id. at 20-21);

5 (3) prosecutorial misconduct in allegedly mishandling and
6 misrepresenting the chain of custody regarding a key piece of
7 evidence (id. at 6-9) and in introducing allegedly prejudicial
8 pictures of Petitioner (id. at 9-10);

9 (4) judicial misconduct in allowing Mr. Davis to represent
10 Petitioner after Mr. Davis allegedly admitted to threatening
11 Petitioner (id. at 6), and for failing to hear a Mardsen motion (id.
12 at 15);

13 (5) appellate counsel was ineffective for failing to raise
14 the above issues in Petitioner's direct appeal, and for failing to
15 communicate openly with Petitioner;

16 (6) the restitution fine was excessive and constituted
17 cruel and unusual punishment in violation of the Eighth Amendment
18 (id. at 21); and

19 (7) juror misconduct and bias on the parts of Jurors 6, 10
20 and 12 (id. at 22).

21 Liberally construed, Petitioner's claims appear cognizable
22 under 28 U.S.C. § 2254 and merit an Answer from Respondent. See
23 Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts
24 must construe pro se petitions for writs of habeas corpus
25 liberally).

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1 III

2 For the foregoing reasons and for good cause shown,

3 1. The Clerk shall serve by certified mail a copy of
4 this Order and the Petition, and all attachments thereto (i.e., Doc.
5 #1), on Respondent and Respondent's attorney, the Attorney General
6 of the State of California. The Clerk also shall serve a copy of
7 this Order on Petitioner.

8 2. Respondent shall file with the Court and serve on
9 Petitioner, within sixty (60) days of the issuance of this Order, an
10 Answer conforming in all respects to Rule 5 of the Rules Governing
11 Section 2254 Cases, showing cause why a writ of habeas corpus should
12 not be granted. Respondent shall file with the Answer and serve on
13 Petitioner a copy of all portions of the state trial record that
14 have been transcribed previously and that are relevant to a
15 determination of the issues presented by the Petition.

16 If Petitioner wishes to respond to the Answer, he shall do
17 so by filing a Traverse with the Court and serving it on Respondent
18 within thirty (30) days of his receipt of the Answer.

19 3. In lieu of an Answer, Respondent may file a Motion to
20 Dismiss on procedural grounds, as set forth in the Advisory
21 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
22 If Respondent files such a motion, Petitioner shall file with the
23 Court and serve on Respondent an Opposition or Statement of
24 Non-Opposition within thirty (30) days of receipt of the motion, and
25 Respondent shall file with the Court and serve on Petitioner a Reply
26 within fifteen (15) days of receipt of any Opposition.

27 4. Petitioner's request to proceed in forma pauperis

1 (Doc. #2) is DENIED because he has sufficient funds to pay the \$5.00
2 filing fee in this action. Petitioner must pay the \$5.00 filing fee
3 no later than May 7, 2012 or this action may be dismissed.

4 5. Petitioner is reminded that all communications with
5 the Court must be served on Respondent by mailing a true copy of the
6 document to Respondent's counsel. Petitioner also must keep the
7 Court and all parties informed of any change of address.

8 IT IS SO ORDERED.

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10 DATED

04/05/2012



THELTON E. HENDERSON
United States District Judge

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