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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID LEE HILL,
Petitioner,
v.
T. VIRGA, warden,
Respondent.

No. C 11-4793 SI (pr)
ORDER RE. CLAIM 6

David Lee Hill, an inmate at the California State Prison - Sacramento, filed this *pro se* action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court reviewed the petition, dismissed the Eighth Amendment portion of Claim # 1, and all of Claim # 6 and Claim # 9, and ordered respondent to show cause why the petition should not be granted as to several other claims.


In Claim 6, petitioner had alleged that the trial court violated petitioner's right to due process when it admitted the rebuttal evidence. The court dismissed Claim 6 because petitioner did not state any facts concerning this claim, nor did he make any legal argument in support of it. The court explained that, if petitioner wanted to pursue this claim, he had to file an amendment to his petition stating the facts supporting this claim for habeas relief. Petitioner did so. In his "amendment to petition" (docket # 4), petitioner alleged that his right to due process was violated by the admission of rebuttal evidence that included "gory photographs of a double murder unrelated to petitioner," "police officer testimony 'rebutting' witness Jones's testimony on a collateral matter that the prosecutor himself had elicited," and gang testimony from witness Telfor. Docket # 4 at 2-3. Now that petitioner has stated the facts supporting it, Claim 6 states

United States District Court
For the Northern District of California

1 a cognizable claim for habeas relief and warrants a response. If and when respondent files an
2 answer to the petition, he should include a discussion of Claim 6 with the discussion of the other
3 claims identified in the order to show cause.

4 IT IS SO ORDERED.

5 DATED: November 14, 2011



6 SUSAN ILLSTON
7 United States District Judge
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