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

ALDRIDGE CURRIE, G-44516,)	
)	
Petitioner,)	No. C 11-5194 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
GREG D. LEWIS, Warden,)	(Docket # 2 & 3)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Contra Costa County Superior Court. Petitioner also seeks appointment of counsel and leave to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915.

BACKGROUND

A jury convicted petitioner of second degree murder, attempted robbery and felon in possession of a firearm, and found true various enhancement allegations. On or about November 21, 2008, petitioner was sentenced to a prison term of 15 years to life plus 14 years. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California. The instant federal petition followed.

1 **DISCUSSION**

2 A. Standard of Review

3 This court may entertain a petition for a writ of habeas corpus "in behalf
4 of a person in custody pursuant to the judgment of a State court only on the
5 ground that he is in custody in violation of the Constitution or laws or treaties of
6 the United States." 28 U.S.C. § 2254(a).

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

10 B. Claims

11 Petitioner seeks federal habeas corpus relief by raising several claims,
12 including discriminatory use of preemptory strike, illegal search and improper
13 admission of evidence. Liberally construed, the claims appear cognizable under
14 § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d
15 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs
16 of habeas corpus liberally).

17 C. Motion for Appointment of Counsel

18 Petitioner's request for appointment of counsel (docket # 3) is DENIED
19 without prejudice. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986)
20 (unless an evidentiary hearing is required, the decision to appoint counsel in
21 habeas corpus proceedings is within the discretion of the district court).

22 Petitioner adequately presented his claims for relief in the petition and an order to
23 show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.
24 1984) (although petitioner had no background in law, denial of appointment of
25 counsel within discretion of district court where petitioner clearly presented
26 issues in petition and accompanying memorandum). The court will appoint

1 counsel on its own motion if an evidentiary hearing is later required. See
2 Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if evidentiary
3 hearing is required).

4 **CONCLUSION**

5 For the foregoing reasons and for good cause shown,

6 1. Petitioner's request to proceed IFP (docket # 2) is GRANTED.

7 2. The clerk shall serve a copy of this order and the petition and all
8 attachments thereto on respondent and respondent's attorney, the Attorney
9 General of the State of California. The clerk also shall serve a copy of this order
10 on petitioner.

11 3. Respondent shall file with the court and serve on petitioner, within
12 60 days of the issuance of this order, an answer conforming in all respects to Rule
13 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
14 habeas corpus should not be granted. Respondent shall file with the answer and
15 serve on petitioner a copy of all portions of the state trial record that have been
16 transcribed previously and that are relevant to a determination of the issues
17 presented by the petition.

18 If petitioner wishes to respond to the answer, he shall do so by filing a
19 traverse with the court and serving it on respondent within 30 days of his receipt
20 of the answer.

21 4. Respondent may file a motion to dismiss on procedural grounds in
22 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
23 Rules Governing Section 2254 Cases. If respondent files such a motion,
24 petitioner shall file with the court and serve on respondent an opposition or
25 statement of non-opposition within 30 days of receipt of the motion, and
26 respondent shall file with the court and serve on petitioner a reply within 15 days

1 of receipt of any opposition.

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

6 SO ORDERED.

7 DATED: Feb. 8, 2012



8 CHARLES R. BREYER
United States District Judge

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