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

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|---------------------------------|---|------------------------|
| MILAN PAKES, J-30733, |) | |
| |) | |
| Petitioner, |) | No. C 11-5284 CRB (PR) |
| |) | |
| vs. |) | ORDER TO SHOW CAUSE |
| |) | |
| P. D. BRAZELTON, Acting Warden, |) | (Docket # 2 & 3) |
| |) | |
| Respondent. |) | |
| _____ |) | |

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

BACKGROUND

Petitioner was convicted by a jury of child endangerment, evading a police officer, and hit and run causing property damage. In a bifurcated proceeding, petitioner admitted the allegations that he had two prior strike convictions and served a prior prison term. On February 29, 2008, the trial court sentenced petitioner to an indeterminate prison term of 25 years to life to run consecutive to a determinate term of four years.

1 cognizable under § 2254 and merit an answer from respondent. See Zichko v.
2 Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se
3 petitions for writs of habeas corpus liberally).

4 C. Motion for Appointment of Counsel

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

9 Petitioner adequately presented his claims for relief in the petition and an order to
10 show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir.
11 1984) (although petitioner had no background in law, denial of appointment of
12 counsel within discretion of district court where petitioner clearly presented
13 issues in petition and accompanying memorandum). The court will appoint
14 counsel on its own motion if an evidentiary hearing is later required. See
15 Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if evidentiary
16 hearing is required).

17 **CONCLUSION**

18 For the foregoing reasons and for good cause shown,

- 19 1. Petitioner's request to proceed IFP (docket # 2) is GRANTED.
- 20 2. The clerk shall serve a copy of this order and the petition and all
21 attachments thereto on respondent and respondent's attorney, the Attorney
22 General of the State of California. The clerk also shall serve a copy of this order
23 on petitioner.
- 24 3. Respondent shall file with the court and serve on petitioner, within
25 60 days of the issuance of this order, an answer conforming in all respects to Rule
26 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
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1 habeas corpus should not be granted. Respondent shall file with the answer and
2 serve on petitioner a copy of all portions of the state trial record that have been
3 transcribed previously and that are relevant to a determination of the issues
4 presented by the petition.

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

8 4. Respondent may file a motion to dismiss on procedural grounds in
9 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
10 Rules Governing Section 2254 Cases. If respondent files such a motion,
11 petitioner shall file with the court and serve on respondent an opposition or
12 statement of non-opposition within 30 days of receipt of the motion, and
13 respondent shall file with the court and serve on petitioner a reply within 15 days
14 of receipt of any opposition.

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

19 SO ORDERED.

20 DATED: Feb. 7, 2012



21 CHARLES R. BREYER
22 United States District Judge
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