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

GILBERT GARDNER,

Petitioner,

vs.

R. GROUNDS, Warden,

Respondent.

) No. C 11-6226 JSW (PR)

) **ORDER TO SHOW CAUSE;**
) **GRANTING LEAVE TO PROCEED IN**
) **FORMA PAUPERIS**

) **(Docket No. 2)**

INTRODUCTION

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction. This order directs Respondent to show cause why the petition should not be granted, and grants Petitioner’s application for leave to proceed in forma pauperis.

BACKGROUND

In 2010, Petitioner was convicted in San Francisco County Superior Court of second-degree burglary and resisting arrest. The trial court sentenced him to a term of seven years in state prison. Earlier this year, the California Court of Appeal affirmed and the California Supreme Court denied a petition for review. The instant petition was filed on December 13, 2011.

1 **DISCUSSION**

2 I Standard of Review

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

9 II Legal Claims

10 Petitioner claims that: (1) he was denied his right to self-representation; and (2)
11 there was insufficient evidence to support his conviction for resisting arrest. Liberally
12 construed, these claims are sufficient to warrant a response from Respondent.

13 **CONCLUSION**

14 For the foregoing reasons and for good cause shown,

15 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
16 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
17 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

18 2. Respondent shall file with the Court and serve on Petitioner, within **ninety (90)**
19 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
20 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
21 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
22 portions of the state trial record that have been transcribed previously and that are relevant
23 to a determination of the issues presented by the petition. If Petitioner wishes to respond
24 to the answer, he shall do so by filing a traverse with the Court and serving it on
25 Respondent within **thirty (30)** days of the date the answer is filed.

26 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on
27 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
28

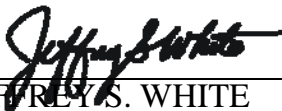
1 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
2 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
3 non-opposition within **thirty (30)** days of the date the motion is filed, and Respondent
4 shall file with the Court and serve on Petitioner a reply within **fifteen (15)** days of the date
5 any opposition is filed.

6 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
7 the Court informed of any change of address by filing a separate paper captioned "Notice
8 of Change of Address." He must comply with the Court's orders in a timely fashion.
9 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
10 to Federal Rule of Civil Procedure 41(b).

11 5. The application to proceed in forma pauperis (docket number 2) is
12 GRANTED.

13 IT IS SO ORDERED.

14 DATED: December 21, 2011

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16 _____
17 JEFFREYS. WHITE
18 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 GILBERT GARDNER,
6 Plaintiff,
7

Case Number: CV11-06226 JSW

CERTIFICATE OF SERVICE

8 v.

9 R.T.C. GROUNDS et al,
10 Defendant.
_____ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on December 21, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Gilbert A. Gardner
18 AD5609
19 CTF-Soledad
20 P.O. Box 686
21 Soledad, CA 93960

22 Dated: December 21, 2011



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk

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