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

CELESTINO GUILLERMO,)	No. C 11-6231 JSW (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE;
)	GRANTING LEAVE TO PROCEED IN
vs.)	FORMA PAUPERIS
)	
TERRI MCDONALD, Warden,)	
)	
Respondent.)	(Docket No. 3)
_____)	

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 Mateo County Superior Court of several counts of “rape in concert” (Cal. Pen. Code § 264.1). The trial court sentenced him to a term of thirty-six years in state prison. In 2010, 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) race-based peremptory challenges to prospective jurors
11 by the prosecutor deprived petitioner of his constitutional right to a jury composed of a
12 fair cross-section of the community; and (2) there was insufficient evidence to support his
13 conviction for rape in concert. Liberally construed, these claims are sufficient to warrant
14 a response from Respondent.

15 **CONCLUSION**

16 For the foregoing reasons and for good cause shown,

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

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

1 3. Respondent may, within **ninety (90) days**, file a motion to dismiss on
2 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
3 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
4 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
5 non-opposition within **thirty (30) days** of the date the motion is filed, and Respondent
6 shall file with the Court and serve on Petitioner a reply within **fifteen (15) days** of the date
7 any opposition is filed.

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

13 5. The application to proceed in forma pauperis (docket number 3) is
14 GRANTED.

15 IT IS SO ORDERED.

16 DATED: 02/03/2012

17 
18 _____
19 JEFFREY S. WHITE
20 United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 CELESTINO GUILLERMO,
6 Plaintiff,
7

Case Number: CV11-06231 JSW

CERTIFICATE OF SERVICE

8 v.

9 TERRI MCDONALD et al,
10 Defendant.
11

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

13 That on February 3, 2012, 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 Celestino Guillermo
18 F96691
19 High Desert State Prison
20 P.O. Box 3030
21 Susanville, CA 96127

22 Dated: February 3, 2012



23 Richard W. Wieking, Clerk
24 By: Tana Ingle, Deputy Clerk
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