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\*E-Filed 8/27/12\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JESSE DAVIS,  
Petitioner,  
v.  
B. GOWER, Warden,  
Respondent.

No. C 12-2221 RS (PR)  
**ORDER TO SHOW CAUSE;**  
**DIRECTIONS TO CLERK TO**  
**AMEND DOCKET**

United States District Court  
For the Northern District of California

**INTRODUCTION**

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. The petition is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. The filing fee has been paid.

**BACKGROUND**

According to the petition, in 2009, an Alameda County Superior Court jury convicted petitioner of second degree murder. He received a sentence of 16 years-to-life in state prison.

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1 **DISCUSSION**

2 This Court may entertain a petition for writ of habeas corpus “in behalf of a person in  
3 custody pursuant to the judgment of a State court only on the ground that he is in custody in  
4 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).  
5 A district court considering an application for a writ of habeas corpus shall “award the writ  
6 or issue an order directing the respondent to show cause why the writ should not be granted,  
7 unless it appears from the application that the applicant or person detained is not entitled  
8 thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in  
9 the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See*  
10 *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

11 As grounds for federal habeas relief, petitioner claims the trial court violated his right  
12 to due process by suppressing evidence. When liberally construed, this claim appears to be  
13 cognizable on federal habeas review.

14 **CONCLUSION**

15 1. The Clerk shall serve by certified mail a copy of this order, the petition and all  
16 attachments thereto, on respondent and respondent’s counsel, the Attorney General for the  
17 State of California. The Clerk shall also 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 date this order is filed, 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 not  
21 be granted based on petitioner’s cognizable claims. Respondent shall file with the answer  
22 and serve on petitioner a copy of all portions of the state trial record that previously have  
23 been transcribed and that are relevant to a determination of the issues presented by the  
24 petition.

25 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse  
26 with the Court and serving it on respondent’s counsel within **thirty (30)** days of the date the  
27 answer is filed.

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

8           5. Petitioner is reminded that all communications with the Court must be served on  
9 respondent by mailing a true copy of the document to respondent's counsel.

10          6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
11 Court and respondent informed of any change of address and must comply with the Court's  
12 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
13 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

14          7. Upon a showing of good cause, requests for a reasonable extension of time will be  
15 granted provided they are filed on or before the deadline they seek to extend.

16          8. The Clerk shall amend the docket to reflect that B. Gower, the warden of the prison  
17 in which petitioner is housed, is the sole respondent in this action. Petitioner erroneously  
18 also named as respondent Matthew Cate, Director of the California Department of  
19 Corrections and Rehabilitation. Gower, not Cate, is the sole proper respondent in this action,  
20 as he is the custodian having day-to-day control over petitioner, the only person who can  
21 produce "the body" of the petitioner. *Brittingham v. United States*, 982 F.2d 378, 379 (9th  
22 Cir. 1992) (quoting *Guerra v. Meese*, 786 F.2d 414, 416 (D.C. Cir. 1986)).

23           **IT IS SO ORDERED.**

24 DATED: August 27, 2012

  
RICHARD SEEBOR  
United States District Judge