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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 AGAPITO DIAZ VASQUEZ, JR.,) No. C 12-3770 JSW (PR)
9 Petitioner,)
10 vs.) **ORDER TO SHOW CAUSE;**
11 R.J. RACKLEY,) **GRANTING LEAVE TO PROCEED IN**
12 Respondent.) **FORMA PAUPERIS**
13) (Docket No. 2)
14 _____)

15 **INTRODUCTION**

16 Petitioner is a California prisoner proceeding pro se, and he has filed a pro se
17 habeas corpus petition pursuant to 28 U.S.C. § 2254. He is granted leave to proceed in
18 forma pauperis, and Respondent is ordered to show cause why the petition should not be
19 granted.

20 **BACKGROUND**

21 In 2010, a jury in Santa Clara County Superior Court convicted Petitioner of four
22 sex offenses against a child. Based on these convictions and sentencing enhancements,
23 the trial court sentenced him to a term of 75 years to life in state prison. Petitioner's
24 appeals to the California Court of Appeal and the Supreme Court of California were
25 denied in 2010 and 2011 respectively.

26 **DISCUSSION**

27 I Standard of Review

28 This court may entertain a petition for a writ of habeas corpus "in behalf of a

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

6 II Legal Claims

7 As grounds for federal habeas relief, Petitioner claims: (1) that the jury instructions
8 on unanimity were erroneous; and (2) that the trial court failed to adequately instruct the
9 jury regarding testimony by experts. These claims, when liberally construed, are
10 cognizable.

11 **CONCLUSION**

12 For the foregoing reasons and for good cause shown,

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

16 2. Respondent shall file with the Court and serve on Petitioner, within **eighty-four**
17 **(84)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of
18 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
19 should not be granted based upon the claims found cognizable above. Respondent shall
20 file with the answer and serve on Petitioner a copy of all portions of the state trial record
21 that have been transcribed previously and that are relevant to a determination of the issues
22 presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by
23 filing a traverse with the Court and serving it on Respondent within **twenty-eight (28)**
24 **days** of the date the answer is filed.

25 4. Respondent may, within **eighty-four (84) days**, file a motion to dismiss on
26 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
27 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
28

1 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
2 non-opposition within **twenty-eight (28)** days of the date the motion is filed, and
3 Respondent shall file with the Court and serve on Petitioner a reply within **fourteen (14)**
4 days of the date any opposition is filed.

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

10 5. Leave to proceed in forma pauperis (docket number 2) is GRANTED.

11 IT IS SO ORDERED.

12 DATED: October 23, 2012

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14 JEFFREY S. WHITE
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

AGAPIDO YASQUEZ,
Plaintiff,

Case Number: CV12-03770 JSW

CERTIFICATE OF SERVICE

v.


R.RACKLEY et al,
Defendant.

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

That on October 23, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Agapito D. Vasquez
AD-0805
Pleasant Valley State Prison
P.O. Box 8500
Coalinga, CA 93210

Dated: October 23, 2012


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