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E-Filed 3/11/13

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DARRYL B. SMITH,
Petitioner,

No. C 12-5890 RS (PR)

ORDER TO SHOW CAUSE

v.

RALPH M. DIAZ, Warden,
Respondent.

_____ /

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.

Respondent shall file an answer or dispositive motion on or before June 15, 2013, unless an extension is granted.

BACKGROUND

According to the petition, in 2012, petitioner pleaded guilty in the San Francisco County Superior Court to a charge of second degree robbery. He received a sentence of 13

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For the Northern District of California

1 years in state prison.

2 **DISCUSSION**

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

12 As grounds for federal habeas relief, petitioner claims that (1) defense counsel
13 rendered ineffective assistance; and (2) his mental illness rendered his plea constitutionally
14 invalid. When liberally construed, these claims appear to be cognizable on federal habeas
15 review.

16 **CONCLUSION**

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

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

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

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

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

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

19 **IT IS SO ORDERED.**

20 DATED: March 11, 2013


21 RICHARD SEEBORG
22 United States District Judge

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