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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CINDY NORMA SAYAD,

No. C 13-1915 SI (pr)

Petitioner,

ORDER TO SHOW CAUSE

v.

WALTER MILLER, Warden,

Respondent.

INTRODUCTION

Cindy Norma Sayad, an inmate at the Central California Women's Facility in Chowchilla, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Her 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 in the United States District Courts. Her motions for appointment of counsel, an evidentiary hearing, and to proceed as a pauper also are before the court.

BACKGROUND

Sayad was convicted in Contra Costa County Superior Court of "driving under the influence causing injury, plus enhancements." Docket # 1, p. 2. On July 10, 2010, she was sentenced to ten years in prison. She appealed. The California Court of Appeal affirmed the conviction and the California Supreme Court denied the petition for review in 2012. Sayad also filed unsuccessful state habeas petitions before filing this action.

1 **DISCUSSION**

2 A. Review Of Petition

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). A
6 district court considering an application for a writ of habeas corpus shall "award the writ or issue
7 an order directing the respondent to show cause why the writ should not be granted, unless it
8 appears from the application that the applicant or person detained is not entitled thereto." 28
9 U.S.C. § 2243.

10 The petition alleges the following claims: (1) Sayad received ineffective assistance of
11 counsel in that counsel failed to call witness Samantha Gilmore; (2) Sayad's Sixth Amendment
12 right to confront witnesses was violated when the trial court improperly excluded evidence
13 relevant to a prosecution witness' credibility; and (3) the cumulative effect of these errors denied
14 her due process. Liberally construed, the claims are cognizable in a federal habeas proceeding.

15
16 B. Petitioner's Motions

17 Petitioner requests that counsel be appointed to represent her in this action. A district
18 court may appoint counsel to represent a habeas petitioner whenever "the court determines that
19 the interests of justice so require" and such person is financially unable to obtain representation.
20 18 U.S.C. § 3006A(a)(2)(B). The decision to appoint counsel is within the discretion of the
21 district court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). Appointment is
22 mandatory only when the circumstances of a particular case indicate that appointed counsel is
23 necessary to prevent due process violations. *See id.* The interests of justice do not require
24 appointment of counsel in this action. The request for appointment of counsel is DENIED.
25 (Docket # 3.)

26 Petitioner's motion for an evidentiary hearing is DENIED. (Docket # 4.) If, after the
27 petition is fully briefed on the merits, the court determines that an evidentiary hearing is
28 necessary it will order one *sua sponte*.

1 **CONCLUSION**

2 For the foregoing reasons,

3 1. The petition states cognizable claims for habeas relief and warrants a response.

4 2. The clerk shall serve by certified mail a copy of this order, the petition and all
5 attachments thereto upon respondent and respondent's attorney, the Attorney General of the State
6 of California. The clerk shall also serve a copy of this order on petitioner.

7 3. Respondent must file and serve upon petitioner, on or before **September 20, 2013**,
8 an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
9 showing cause why a writ of habeas corpus should not be issued. Respondent must file with the
10 answer a copy of all portions of the court proceedings that have been previously transcribed and
11 that are relevant to a determination of the issues presented by the petition.

12 4. If petitioner wishes to respond to the answer, she must do so by filing a traverse
13 with the court and serving it on respondent on or before **October 18, 2013**.


14 5. Petitioner is responsible for prosecuting this case. Petitioner must promptly keep
15 the court informed of any change of address and must comply with the court's orders in a timely
16 fashion.

17 6. Petitioner is cautioned that she must include the case name and case number for
18 this case on any document she submits to this court for consideration in this case.

19 7. Petitioner's motions for appointment of counsel and an evidentiary hearing are
20 DENIED. (Docket # 3 and # 4.) Her *in forma pauperis* application is GRANTED. (Docket #
21 2.)

22 IT IS SO ORDERED.

23 DATED: July 2, 2013

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25 _____
26 SUSAN ILLSTON
27 United States District Judge
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