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E-Filed 3/7/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TERRELL WHITFIELD,

No. C 13-3267 RS (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

GARY SWARTHOUT, Warden,

Respondent.

INTRODUCTION

Petitioner seeks federal habeas relief under 28 U.S.C. § 2254 from his state convictions. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. Respondent shall file a response to the petition on or before June 14, 2016, unless an extension is granted.

The petition may be untimely. Respondent is directed to consider first whether a motion to dismiss on grounds of untimeliness is the most appropriate first response to the petition. If he so concludes, he may file a motion to dismiss, though he is not required to do so.

BACKGROUND

According to the petition, in 2011, an Alameda County Superior Court jury convicted petitioner of second degree robbery and found true an allegation that he personally used a

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1 firearm during the robbery. Based on the verdict and finding, petitioner was sentenced to
2 thirteen years in state prison.

3 DISCUSSION

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

13 As grounds for federal habeas relief, petitioner alleges the trial court violated his Sixth
14 Amendment rights by refusing to (1) grant a continuance so that he could procure new
15 counsel; and (2) appoint substitute counsel when he voiced complaints about his appointed
16 counsel. When liberally construed, these claims are cognizable on federal habeas review.

17 CONCLUSION

18 1. The Clerk shall serve a copy of this order, the petition and all attachments thereto,
19 on respondent and respondent’s counsel, the Attorney General for the State of California.
20 The Clerk shall also serve a copy of this order on petitioner.

21 2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**
22 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
23 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
24 be granted based on petitioner’s cognizable claims. Respondent shall file with the answer
25 and serve on petitioner a copy of all portions of the state trial record that previously have
26 been transcribed and that are relevant to a determination of the issues presented by the
27 petition.
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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 8. The Court notes that the filing fee has been paid.

20 **IT IS SO ORDERED.**

21 DATED: March 7, 2016


RICHARD SEEBORG
United States District Judge

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