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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLENARD CEBRON WADE,  
Petitioner,  
v.  
FRED FOULK,  
Respondent.

Case No. [13-cv-4636-TEH](#)

ORDER TO SHOW CAUSE

United States District Court  
Northern District of California

Petitioner Clenard Cebron Wade, a state prisoner, proceeds with a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. The Court previously found that nine claims were sufficient to require a response and ordered Respondent to show cause. Respondent filed a motion to dismiss arguing that the petition contained both exhausted and unexhausted claims and some of the claims failed to raise a federal constitutional issue.

As noted in the prior Court order several claims were dismissed and the Court found that three claims should continue: one, two and nine. The Court also found that claim seven was unexhausted but Petitioner could file a motion to stay to exhaust it or strike the claim. Petitioner had filed a response indicating his desire to strike claim seven and continue with the other three claims. Docket No. 26.

Therefore, the case proceeds on the following three claims:  
(1) the trial court denied Petitioner his right to represent

1 himself; (2) the trial court gave erroneous jury instructions  
2 with respect to battery with serious bodily injury that violated  
3 due process; and (3)<sup>1</sup> juror misconduct and bias.

4 For the foregoing reasons, the Court orders as follows:

5 1. Respondent shall file with the Court and serve on  
6 Petitioner, within sixty-three (63) days of the issuance of this  
7 Order, an Answer conforming in all respects to Rule 5 of the  
8 Rules Governing Section 2254 Cases, showing cause why a writ of  
9 habeas corpus should not be granted. Respondent shall file with  
10 the Answer and serve on Petitioner a copy of all portions of the  
11 state trial record that have been transcribed previously and that  
12 are relevant to a determination of the issues presented by the  
13 Petition.

14 If Petitioner wishes to respond to the Answer, he shall do  
15 so by filing a Traverse with the Court and serving it on  
16 Respondent within twenty-eight (28) days of his receipt of the  
17 Answer.

18 2. In lieu of an Answer, Respondent may file a Motion to  
19 Dismiss on procedural grounds, as set forth in the Advisory  
20 Committee Notes to Rule 4 of the Rules Governing Section 2254  
21 Cases. If Respondent files such a motion, Petitioner shall file  
22 with the Court and serve on Respondent an Opposition or Statement  
23 of Non-Opposition within thirty-five (35) days of receipt of the  
24 motion, and Respondent shall file with the Court and serve on  
25 Petitioner a Reply within fourteen (14) days of receipt of any  
26 Opposition.

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<sup>1</sup> Formerly claim nine.

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3. Petitioner is reminded that all communications with the Court must be served on Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner also must keep the Court and all parties informed of any change of address by filing a separate document entitled "Notice of Change of Address."

IT IS SO ORDERED.

Dated: 07/06/2015



THELTON E. HENDERSON  
United States District Judge

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