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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TYRONE REED, Sr.,
Petitioner,
v.
MARTIN BITER,
Respondent.

Case No. [13-cv-5455-TEH](#)
ORDER TO FILE A RESPONSE
Re: Dkt. No. 38

United States District Court
Northern District of California

I

Petitioner, Tyrone Reed, proceeds with a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. The original petition presented the following claims: (1) due process violation based on trial court's decision not to admit exculpatory evidence; (2) ineffective assistance of trial counsel; (3) due process violation based on trial judge's bias because she took the charges against Petitioner personally and because Petitioner had filed numerous civil rights complaints against the judge; (4) ineffective assistance of counsel appointed on remand to represent Petitioner on a motion for a new trial; and (5) due process violation based on trial court's refusal to hold a new trial motion or a Marsden hearing based on incompetence of counsel.

Respondent filed a motion to dismiss because only claim four had been exhausted. Petitioner eventually elected to dismiss the

1 unexhausted claims and the petition continued solely on claim
2 four. Respondent filed an answer but before the Court could
3 issue a ruling on the sole claim in the petition, Petitioner
4 filed an amended petition (Docket No. 33) and stated that the
5 California Supreme Court had recently denied a state habeas
6 petition, presumably exhausting the additional claims.

7 The amended petition appeared to present the same claims as
8 the original petition, though claim one and five as described
9 above appeared to be combined.¹ Wary that Petitioner was again
10 bringing a mixed petition, the Court ordered him to provide a
11 copy of the petition submitted to the California Supreme Court,
12 rather than many more months being spent on a second motion to
13 dismiss for failure to exhaust.

14 Petitioner first submitted a filing (Docket No. 38) that was
15 a portion of the petition to the California Supreme Court, but
16 lacked the exhibits. It only presented one claim to the
17 California Supreme Court that the state superior court and state
18 court of appeal were abusing their authority. Docket No. 38 at
19 7. That petition did not present the substance of the claims he
20 brings in this federal petition.

21 Petitioner then submitted an additional filing (Docket No.
22 39) that contained the petition to the California Supreme Court
23 and exhibits that were presumably filed with the California
24 Supreme Court. The exhibits are several hundred pages and
25 contain his petition to the California Court of Appeal, briefs
26

27 ¹ The Court originally did not think that Petitioner included the
28 exhausted claim from the prior petition, but a review of the
amended petition demonstrates that it is presented on page six.

1 from prior appeals, transcripts, and many cases. Interspersed
2 throughout the hundreds of pages are the claims Petitioner
3 presents in this federal petition.

4 Unfortunately, the Court cannot be certain if the claims
5 were or were not exhausted. It is not clear if the several
6 hundred pages were provided to the California Supreme Court or
7 even if that Court was aware of those claims as the only claim
8 specifically brought to the California Supreme Court was that the
9 lower courts were abusing their authority.

10 The Court will not yet rule on the merits of the claim from
11 the original petition. Respondent will be ordered to either
12 answer the new claims or raise a motion if the claims are
13 unexhausted, untimely, or there is another procedural problem.
14 The Court construes Docket No. 33 as the amended petition,
15 because the other amended petition, Docket No. 39 fails to
16 adequately and plainly set forth the claims.

17 II

18 For the foregoing reasons and for good cause shown,

19 1. Petitioner's motion to amend (Docket No. 38) is GRANTED
20 and the case continues on the amended petition (Docket No. 33)

21 2. Respondent shall file with the Court and serve on
22 Petitioner, within sixty-three (63) days of the issuance of this
23 Order, an Answer conforming in all respects to Rule 5 of the
24 Rules Governing Section 2254 Cases, showing cause why a writ of
25 habeas corpus should not be granted. Respondent shall file with
26 the Answer and serve on Petitioner a copy of all portions of the
27 state trial record that have been transcribed previously and that
28 are relevant to a determination of the issues presented by the

1 Petition.

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

6 3. In lieu of an Answer, Respondent may file a Motion to
7 Dismiss on procedural grounds, as set forth in the Advisory
8 Committee Notes to Rule 4 of the Rules Governing Section 2254
9 Cases. If Respondent files such a motion, Petitioner shall file
10 with the Court and serve on Respondent an Opposition or Statement
11 of Non-Opposition within thirty-five (35) days of receipt of the
12 motion, and Respondent shall file with the Court and serve on
13 Petitioner a Reply within fourteen (14) days of receipt of any
14 Opposition.

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

20 IT IS SO ORDERED.

21 Dated: 10/07/2015



THELTON E. HENDERSON
United States District Judge

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