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E-Filed 5/7/14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GLENN SUNKETT,

No. C 14-0069 RS (PR)

Petitioner,

ORDER TO SHOW CAUSE

v.

WARREN MONTGOMERY, Warden,

Respondent.

United States District Court
For the Northern District of California

INTRODUCTION

Petitioner seeks federal habeas relief 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 August 8, 2014, unless an extension is granted.

The petition may be untimely. Petitioner was sentenced in 2010 and the instant petition was filed four years later, in 2014. 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 2009, a Mendocino County Superior Court jury convicted petitioner of robbery, kidnapping, burglary, making a criminal threat, false imprisonment by violence, and possession of a firearm by a felon. He was sentenced in 2010 to a term of 63

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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 or
7 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 alleges that (1) the jury’s verdict was
13 erroneous because the scientific and technological evidence supported his alibi defense,
14 which the Court construes as a claim that the jury did not abide by the beyond a reasonable
15 doubt standard and as a challenge to the jury’s credibility determination in favor of the
16 prosecution; (2) the identification process used at trial violated his right to due process;
17 (3) the trial court violated his right to due process by denying petitioner the opportunity to
18 present a late motion; (4) defense counsel rendered ineffective assistance; (5) the use of a
19 jury instruction violated his right to due process; (6) his kidnapping convictions were not
20 supported by sufficient evidence; (7) his sentence is incorrect; and (8) there was cumulative
21 error. When liberally construed, these claims are cognizable on federal habeas review.

22 CONCLUSION

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

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

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

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

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

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

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

24 8. The Court notes that the filing fee has been paid.

25 **IT IS SO ORDERED.**

26 DATED: May 7, 2014


RICHARD SEEBORG
United States District Judge

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