

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARCHE L. HARRISON,  
Petitioner,  
v.  
GARY SWARTHOUT, Warden,  
Respondent.

Case No. 14-cv-01121-JST (PR)

**ORDER TO SHOW CAUSE**

**INTRODUCTION**

Marche L. Harrison, a prisoner at California State Prison – Solano, filed a pro se amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. His amended 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. He has paid the \$5.00 filing fee.

**BACKGROUND**

In 2011, an Alameda County Superior Court jury found petitioner guilty of residential burglary, residential robbery, forcible rape while acting in concert, forcible oral copulation while acting in concert, and possession of a firearm by someone previously convicted of a felony. The trial court found petitioner had one prior conviction for selling drugs, and two prior robbery convictions. Petitioner was sentenced to 107 years to life in state prison. The California Court of Appeal affirmed, and the California Supreme Court denied review. Petitioner did not seek habeas relief in state court. The instant action was filed on March 10, 2014.

**DISCUSSION**

This Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in

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

8 Petitioner seeks federal habeas relief on the following claims:

9 1. The prosecution withheld a potentially exculpatory document showing that the  
10 Oakland Police Department had closed the case against petitioner more than two years prior to his  
11 arrest.

12 2. The prosecution failed to correct the false testimony of Oakland Police Officer  
13 Bergquist stating that the Oakland Police Department had maintained an open file against  
14 petitioner.

15 3. The trial court erred in replacing a deliberating juror with an alternate juror.

16 Liberally construed, petitioner's claims appear cognizable under 28 U.S.C. § 2254 and  
17 merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001)  
18 (federal courts must construe pro se petitions for writs of habeas corpus liberally).

19 **CONCLUSION**

20 1. The Clerk shall mail a copy of this order and the petition with all attachments to the  
21 respondent and the respondent's attorney, the Attorney General of the State of California. The  
22 Clerk shall also serve a copy of this order on petitioner.

23 2. Respondent shall file with the Court and serve on petitioner, within **ninety-one (91)**  
24 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
25 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted  
26 based on the claims found cognizable herein. Respondent shall file with the answer and serve on  
27 petitioner a copy of all portions of the state trial record that have been transcribed previously and  
28 that are relevant to a determination of the issues presented by the petition.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on respondent within **twenty-eight (28) days** of the date the answer is filed.


3. Respondent may file, within **ninety-one (91) days**, a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the Court and serve on respondent an opposition or statement of non-opposition within **twenty-eight (28) days** of the date the motion is filed, and respondent shall file with the Court and serve on petitioner a reply within **fourteen (14) days** of the date any opposition is filed.

4. 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 must keep the Court informed of any change of address and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See Martinez v. Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

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

**IT IS SO ORDERED.**

Dated: July 9, 2014

  
\_\_\_\_\_  
JON S. TIGAR  
United States District Judge