

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

KOSAL KIM KHEK,

No. C-14-2936 EMC (pr)

Petitioner,

v.

**ORDER TO SHOW CAUSE**

FRED FOULK, Warden,

Respondent.

---

**I. INTRODUCTION**

Petitioner, an inmate at the High Desert State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His 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 in the United States District Courts.

**II. BACKGROUND**

The petition and attachments provide the following information: Following a jury trial, Petitioner was convicted in Santa Clara County Superior Court of first degree murder and found to have personally used a deadly and dangerous weapon (viz., a knife) and participated in a criminal street gang. On July 30, 2010, Petitioner was sentenced to 26 years to life in prison. He unsuccessfully appealed his conviction. Petitioner then filed this action.

**III. 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 an  
3 order directing the respondent to show cause why the writ should not be granted, unless it appears  
4 from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

5 The petition alleges several claims: (1) the trial court violated Petitioner’s right to due  
6 process by “excluding exculpatory evidence that Robert DeJong had told the police that the plan was  
7 to hurt Nguyen, but not to kill him,” Docket # 1 at 9; (2) the admission of evidence of a co-  
8 defendant’s hearsay statements to the police violated Petitioner’s Sixth Amendment right to confront  
9 witnesses under *Crawford v. Washington*, 541 U.S. 36 (2004); (3) Petitioner received ineffective  
10 assistance of trial counsel with regard to the *Crawford* issue if counsel’s objection was insufficient  
11 to preserve the issue; (4) there was juror misconduct that caused Petitioner to be denied his rights to  
12 due process and trial by an impartial jury; and (5) the admission of “a gruesome post-mortem  
13 photograph” was error and deprived Petitioner of his Fifth, Sixth and Fourteenth Amendment rights  
14 to a fair trial, Docket # 1 at 19, 22. Liberally construed, the claims are cognizable in a federal  
15 habeas action.

#### 16 IV. CONCLUSION

17 For the foregoing reasons,

18 1. The petition warrants a response.

19 2. The Clerk shall serve by mail a copy of this order, the petition and all attachments  
20 thereto upon Respondent and Respondent’s attorney, the Attorney General of the State of California.  
21 The clerk shall also serve a copy of this order on Petitioner.

22 3. Respondent must file and serve upon Petitioner, on or before **November 7, 2014**, an  
23 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing  
24 cause why a writ of habeas corpus should not be issued. Respondent must file with the answer a  
25 copy of all portions of the court proceedings that have been previously transcribed and that are  
26 relevant to a determination of the issues presented by the petition.

27 4. If Petitioner wishes to respond to the answer, he must do so by filing a traverse with  
28 the Court and serving it on Respondent on or before **December 5, 2014**.

