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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JOSE AVELINO SANDOVAL,
Petitioner,
v.
DAVID DAVEY,
Respondent.

Case No. [16-cv-02195-LB](#)

ORDER TO SHOW CAUSE
[Re: ECF No. 1]

INTRODUCTION

Jose Avelino Sandoval, a prisoner housed at the California State Prison in Corcoran, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He consented to proceed before a magistrate judge. (ECF No. 4.)¹ 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. This order requires the respondent to respond to the petition.

STATEMENT

Mr. Sandoval’s petition and attachments provide the following information: A Santa Clara County Superior Court jury convicted Mr. Sandoval of second degree murder and he pleaded guilty to three counts of attempted murder. He was sentenced to a total of 26 years, eight months

¹ Citations are to the Electronic Case File (“ECF”); pin cites are to the ECF-generated page numbers at the tops of the documents.

1 to life in prison.

2 He appealed. The California Court of Appeal affirmed Mr. Sandoval’s conviction in 2014 and
3 the California Supreme Court denied his petition for review in 2015.

4 **ANALYSIS**

5 This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody
6 pursuant to the judgment of a State court only on the ground that he is in custody in violation of
7 the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court
8 considering an application for a writ of habeas corpus shall “award the writ or issue an order
9 directing the respondent to show cause why the writ should not be granted, unless it appears from
10 the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

11 The petition alleges a single claim, i.e., that the evidence was insufficient to support Mr.
12 Sandoval’s murder conviction. Liberally construed, the claim is cognizable in a federal habeas
13 action and warrants a response.

14 **CONCLUSION**

15 For the foregoing reasons,

- 16 1. The petition warrants a response.
- 17 2. The clerk shall serve by mail a copy of this order, the petition and all attachments thereto
18 upon the respondent and the respondent's attorney, the Attorney General of the State of California.
19 The clerk shall also serve a copy of this order on the petitioner.

20 3. The clerk also shall serve a copy of the “consent or declination to magistrate judge
21 jurisdiction” form upon the respondent and the respondent's attorney, the Attorney General of the
22 State of California.

23 4. The respondent must file and serve upon the petitioner, on or before **August 12, 2016**, an
24 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing
25 cause why a writ of habeas corpus should not be issued. The respondent must file with the answer
26 a copy of all portions of the court proceedings that have been previously transcribed and that are
27 relevant to a determination of the issues presented by the petition.

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5. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the court and serving it on the respondent on or before **September 9, 2016**.

6. The petitioner is responsible for prosecuting this case. The petitioner must promptly keep the court informed of any change of address and must comply with the court's orders in a timely fashion.

7. The petitioner is cautioned that he must include the case name and case number for this case on the first page of any document he submits to the court for consideration in this case.

IT IS SO ORDERED.

Dated: May 31, 2016



LAUREL BEELER
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE AVELINO SANDOVAL,
Plaintiff,

v.

DAVID DAVEY,
Defendant.

Case No. 3:16-cv-02195-LB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 31, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Avelino Sandoval ID: AP-4098
California State Prison Corcoran
PO Box 3471
Corcoran, CA 93212

Dated: May 31, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable LAUREL BEELER