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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DeWAYNE L. EWING, AI4771,)	
)	
Petitioner,)	No. C 16-5875 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
J. A. LIZARRAGA, Warden,)	(ECF No. 2)
)	
Respondent.)	
)	

Petitioner, a state prisoner incarcerated at Mule Creek State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and sentence from Alameda County Superior Court. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

On or about September 12, 2011, petitioner pleaded no contest to two counts of kidnaping and one count of carjacking pursuant to a negotiated plea agreement, and was sentenced to 25 years in state prison.

On September 17, 2012, petitioner filed a petition for a writ of habeas corpus in Alameda County Superior Court challenging his presentence time credits and his counsel’s advice to enter a plea of no contest. It was denied in a reasoned opinion on November 15, 2012, and a subsequent petition to the California Court of Appeal was summarily denied on April 11, 2013.

1 Hill v. Lockhart, 474 U.S. 52, 56-57 (1985). Liberally construed, petitioner's
2 claim that counsel's advice to plead no contest amounted to ineffective assistance
3 of counsel appears cognizable under § 2254 and merits an answer from
4 respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal
5 courts must construe pro se petitions for writs of habeas corpus liberally).

6 **CONCLUSION**

7 For the foregoing reasons and for good cause shown,

8 1. Petitioner's request to proceed in forma pauperis (ECF No. 2) is
9 **GRANTED.**

10 2. The clerk shall serve a copy of this order and the petition and all
11 attachments thereto on respondent and respondent's attorney, the Attorney
12 General of the State of California. The clerk also shall serve a copy of this order
13 on petitioner.

14 3. Respondent shall file with the court and serve on petitioner, within
15 60 days of the issuance of this order, an answer conforming in all respects to Rule
16 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
17 habeas corpus should not be granted. Respondent shall file with the answer and
18 serve on petitioner a copy of all portions of the state trial record that have been
19 transcribed previously and that are relevant to a determination of the issues
20 presented by the petition.

21 If petitioner wishes to respond to the answer, he shall do so by filing a
22 traverse with the court and serving it on respondent within 30 days of his receipt
23 of the answer.

24 4. Respondent may file a motion to dismiss on procedural grounds in
25 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
26 Rules Governing Section 2254 Cases. If respondent files such a motion,
27

1 petitioner must serve and file an opposition or statement of non-opposition not
2 more than 28 days after the motion is served and filed, and respondent must serve
3 and file a reply to an opposition not more than 14 days after the opposition is
4 served and filed.

5 5. Petitioner is reminded that all communications with the court must
6 be served on respondent by mailing a true copy of the document to respondent's
7 counsel. Petitioner must also keep the court and all parties informed of any
8 change of address.

9 SO ORDERED.

10 DATED: Oct. 14, 2016


11 CHARLES R. BREYER
12 United States District Judge