

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

ALAN BRUCE MCFARLANE,  
Petitioner,  
v.  
STEPHEN FREITAS,  
Respondent.

Case No. [16-cv-06401-JD](#)

**ORDER FOR RESPONDENT TO  
SHOW CAUSE**

Alan Bruce McFarlane, a probationer, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee and already served respondent.

**BACKGROUND**

A jury found petitioner guilty of unlawfully possessing an assault weapon and he was sentenced to 36 months of probation. Petition at 1; *People v. Macfarlane*, No. A141326, 2016 WL 3634286, at \*1 (Cal. Ct. App. June 29, 2016). The California Court of Appeal affirmed the conviction. *Macfarlane*, 2016 WL 3634286, at \*2. The California Supreme Court denied review. Petition at 2.

**DISCUSSION**

**STANDARD OF REVIEW**

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 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of

1 habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court  
2 must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting  
3 each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’  
4 pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility  
5 of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
6 688, 689 (1st Cir. 1970)).

7 **LEGAL CLAIMS**

8 Petitioner’s sole ground for federal habeas relief is that his rights to due process, a fair trial  
9 and to present a defense were violated by the trial court’s ruling that quashed and excluded the  
10 testimony of a deputy who was called as petitioner’s witness. Liberally construed, this claim is  
11 sufficient to require a response.

12 **CONCLUSION**

13 1. Because all previously dates have been vacated, respondent shall file with the Court  
14 and serve on petitioner, within fifty-six (56) days of the issuance of this order, an answer  
15 conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause  
16 why a writ of habeas corpus should not be granted. Respondent shall file with the answer and  
17 serve on petitioner a copy of all portions of the state trial record that have been transcribed  
18 previously and that are relevant to a determination of the issues presented by the petition.

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


21 2. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
22 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
23 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the date this order  
24 is entered. If a motion is filed, petitioner shall file with the Court and serve on respondent an  
25 opposition or statement of non-opposition within twenty-eight (28) days of receipt of the motion,  
26 and respondent shall file with the Court and serve on petitioner a reply within fourteen (14) days  
27 of receipt of any opposition.  
28

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

3. 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).

**IT IS SO ORDERED.**

Dated: March 27, 2017

  
\_\_\_\_\_  
JAMES DONATO  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 ALAN BRUCE MCFARLANE,  
4 Plaintiff,  
5 v.  
6 STEPHEN FREITAS,  
7 Defendant.  
8

Case No. [16-cv-06401-JD](#)

**CERTIFICATE OF SERVICE**


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

11  
12 That on March 27, 2017, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.  
16

17 Alan Bruce McFarlane  
18 P.O. Box 9554  
19 Santa Rosa, CA 95405-1554

20 Dated: March 27, 2017  
21

22 Susan Y. Soong  
23 Clerk, United States District Court

24  
25 By:   
26 LISA R. CLARK, Deputy Clerk to the  
27 Honorable JAMES DONATO  
28