

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAWELFORD LEE JOHNSON,
Petitioner,

v.

KIM HOLLAND,
Respondent.Case No. [16-cv-06601-RS](#) (PR)**ORDER TO SHOW CAUSE****INTRODUCTION**

Petitioner seeks federal habeas relief under 28 U.S.C. § 2254 from his state convictions. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

The petition appears untimely. Petitioner was convicted in 1997 and the petition was not filed until 2016, which is certainly outside the one-year statute of limitations period for filing a federal habeas petition. *See* 28 U.S.C. § 2244(d)(1). **Respondent is directed to consider first if the petition is in fact untimely. If respondent concludes that it is untimely, he may file a motion to dismiss on such grounds, though he is not required to do so.**

BACKGROUND

According to the petition, in 1997, in the Santa Clara County Superior Court, petitioner pleaded guilty to charges of robbery and reckless driving. He was sentenced to 30 years and 4 months in state prison.

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

As grounds for federal habeas relief, petitioner alleges his sentence is unconstitutional for the reasons listed in the petition. When liberally construed, these claims are cognizable on federal habeas review.

CONCLUSION

1. The Clerk shall serve a copy of this order, the petition and all attachments thereto, on respondent and respondent’s counsel, the Attorney General for the State of California. The Clerk shall also serve a copy of this order on petitioner.

2. Respondent shall file with the Court and serve on petitioner, within sixty (60) days of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on petitioner’s cognizable claims. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that previously have been transcribed and that are relevant to a determination of the issues presented by

1 the petition.

2 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
3 with the Court and serving it on respondent's counsel within thirty (30) days of the date the
4 answer is filed.

5 4. In lieu of an answer, respondent may file, within sixty (60) days of the date this
6 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
7 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent
8 files such a motion, petitioner shall file with the Court and serve on respondent an
9 opposition or statement of non-opposition within thirty (30) days of the date the motion is
10 filed, and respondent shall file with the Court and serve on petitioner a reply within fifteen
11 (15) days of the date any opposition is filed.

12 5. Petitioner is reminded that all communications with the Court must be served on
13 respondent by mailing a true copy of the document to respondent's counsel.


14 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
15 Court and respondent informed of any change of address and must comply with the
16 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this
17 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

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

20 8. The Court notes that the filing fee has been paid.

21 **IT IS SO ORDERED.**

22 **Dated:** January 13, 2017

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24 RICHARD SEEBORG
25 United States District Judge
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