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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER J. MILLER,
Petitioner,
v.
JOEL MARTINEZ,
Respondent.

Case No. [16-cv-06806-JD](#)

**ORDER FOR RESPONDENT TO
SHOW CAUSE**

Re: Dkt. Nos. 2, 4, 5

Christopher Miller, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has also filed a motion to proceed in forma pauperis. Petitioner was convicted in Contra Costa County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d).

BACKGROUND

Miller was found guilty of molesting a child under the age of 14, possession of child pornography and failure to register as a sex offender. He was sentenced to 69 years in state prison. His appeals and state habeas petitions were denied.

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 As grounds for federal habeas relief, Miller asserts that: (1) the trial court erred in
9 excluding evidence which also prevented him from presenting a defense and trial counsel was
10 ineffective for failing to more thoroughly challenge the ruling; (2) the prosecutor committed
11 misconduct during cross examination that suggested Miller had committed prior offenses and to
12 the extent this claims is forfeited, trial counsel was ineffective; (3) trial counsel was ineffective by
13 allowing the prosecutor to question Miller about past events that the trial court had excluded; (4)
14 trial counsel was ineffective by allowing the prosecutor to misstate the law regarding Penal Code
15 section 288; and (5) the trial court erred in issuing an excessive restitution fine in violation of
16 *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). These claims are sufficient to require a
17 response.

18 Petitioner also filed a motion for discovery. A habeas petitioner, unlike the usual civil
19 litigant in federal court, is not entitled to discovery as a matter of ordinary course. *See Bracy v.*
20 *Gramley*, 520 U.S. 899, 904 (1997). However, Rule 6(a) of the Federal Rules Governing Section
21 2254 Cases, 28 U.S.C. foll. § 2254, provides that a “judge may, for good cause, authorize a party
22 to conduct discovery under the Federal Rules of Civil Procedure and may limit the extent of
23 discovery.” Before deciding whether a petitioner is entitled to discovery under Rule 6(a) the court
24 must first identify the essential elements of the underlying claim. *See Bracy*, 520 U.S. at 904
25 (difficulties of proof aside, petitioner’s allegation of judicial bias, if proved, would violate due
26 process clause). The court must then determine whether the petitioner has shown “good cause” for
27 appropriate discovery to prove his claim. *See id.* Good cause for discovery under Rule 6(a) is
28

1 shown ““where specific allegations before the court show reason to believe that the petitioner may,
2 if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief”” *Id.* at
3 908-09 (quoting *Harris v. Nelson*, 394 U.S. 286, 299 (1969)); *Pham v. Terhune*, 400 F.3d 740, 743
4 (9th Cir. 2005).

5 Miller seeks two witnesses to be examined, his mother and his trial counsel, regarding a
6 letter these witnesses may have seen. At trial the victim testified that Miller molested him. The
7 victim was cross-examined about a letter he wrote stating the Miller never hurt or molested him.
8 The victim stated a relative told him to write the letter but he did not fully understand it. The letter
9 was admitted into evidence. Miller seeks discovery regarding a possible earlier draft of the letter
10 that these witnesses may have seen. He has failed to show good cause for discovery in this case.
11 The letter was admitted into evidence and the victim was cross-examined at length about the letter
12 and the circumstances surrounding it. The motion is denied.

13 Petitioner has also requested the appointment of counsel. The Sixth Amendment’s right to
14 counsel does not apply in habeas corpus actions. *Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th
15 Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) provides that in habeas cases, whenever “the
16 court determines that the interests of justice so require”, representation may be provided for any
17 financially eligible person. Petitioner has presented his claims adequately, and they are not
18 particularly complex.

19 **CONCLUSION**

20 1. The motion to proceed in forma pauperis (Docket No. 2) is **GRANTED**. The
21 motion for discovery (Docket No. 4) and the motion to appoint counsel (Docket No. 5) are
22 **DENIED**.

23 2. The clerk shall serve by regular mail a copy of this order and the petition and all
24 attachments thereto on respondent and respondent’s attorney, the Attorney General of the State of
25 California. The clerk also shall serve a copy of this order on petitioner.

26 3. Respondent shall file with the Court and serve on petitioner, within fifty-six (56)
27 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
28 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.

1 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
2 trial record that have been transcribed previously and that are relevant to a determination of the
3 issues presented by the petition.

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

6 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an
7 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
8 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the date this order
9 is entered. If a motion is filed, petitioner shall file with the Court and serve on respondent an
10 opposition or statement of non-opposition within twenty-eight (28) days of receipt of the motion,
11 and respondent shall file with the Court and serve on petitioner a reply within fourteen (14) days
12 of receipt of any opposition.

13 5. Petitioner is reminded that all communications with the Court must be served on
14 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep
15 the Court informed of any change of address and must comply with the Court's orders in a timely
16 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
17 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
18 1997) (Rule 41(b) applicable in habeas cases).

19 **IT IS SO ORDERED.**

20 Dated: January 17, 2017



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JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 CHRISTOPHER J. MILLER,
4 Plaintiff,
5 v.
6 JOEL MARTINEZ,
7 Defendant.
8

Case No. [16-cv-06806-JD](#)

CERTIFICATE OF SERVICE

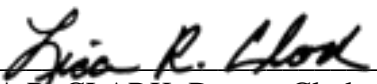
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on January 17, 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 Christopher J. Miller
18 T75520
19 Sierra Conservation Center
5150 O'Byrnes Ferry Rd.
Jamestown, CA 95327

20
21 Dated: January 17, 2017
22

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

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