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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HAROLD CARTER,
Petitioner,

v.

DEBBIE ASUNCION,
Respondent.

Case No. [16-cv-07167-JD](#)

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS
AND FOR RESPONDENT TO
SHOW CAUSE**

Re: Dkt. Nos. 2, 3, 5

Harold Carter, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also applied for leave to proceed in forma pauperis.

BACKGROUND

A jury found petitioner guilty of one count of first degree murder and various sentencing enhancements. *People v. Carter*, No. A135833, 2014 WL 2927570, at *1 (Cal. Ct. App. June 27, 2014). The California Court of Appeal affirmed the conviction. *Id.* The California Supreme Court denied review. Petitioner states that all claims were presented to the California Supreme Court. Petition at 4.

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
8 **LEGAL CLAIMS**

9 As grounds for federal habeas relief, petitioner asserts that: (1) he is entitled to equitable
10 tolling for the late filing of the petition; (2) the prosecution violated *Brady v. Maryland*, 373 U.S.
11 83 (1963); (3) trial counsel was ineffective; and (4) the trial court erred by allowing the
12 prosecution to cross examine him with a prejudicial photograph.

13 Petitioner’s first claim regarding equitable tolling is not properly brought as a habeas claim
14 and is dismissed. If respondent files a motion to dismiss the petition as untimely, then petitioner
15 may present arguments for equitable tolling. Liberally construed, the remaining claims are
16 sufficient to require a response.

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

23 **CONCLUSION**

24 1. Leave to proceed in forma pauperis (Docket Nos. 2, 5) is **GRANTED**. The motion
25 to appoint counsel (Docket No. 3) is **DENIED**.

26 2. The first claim is dismissed. Claims two, three and four are sufficient to proceed.
27 The clerk shall serve by regular mail a copy of this order and the petition and all attachments
28

1 thereto on respondent and respondent's attorney, the Attorney General of the State of California.
2 The clerk also shall serve a copy of this order on petitioner.

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


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

11 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an
12 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
13 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the date this order
14 is entered. If a motion is filed, petitioner shall file with the Court and serve on respondent an
15 opposition or statement of non-opposition within twenty-eight (28) days of receipt of the motion,
16 and respondent shall file with the Court and serve on petitioner a reply within fourteen (14) days
17 of receipt of any opposition.

18 5. Petitioner is reminded that all communications with the Court must be served on
19 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep
20 the Court informed of any change of address and must comply with the Court's orders in a timely
21 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
22 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
23 1997) (Rule 41(b) applicable in habeas cases).

24 **IT IS SO ORDERED.**

25 Dated: February 6, 2017

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JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 HAROLD CARTER,
4 Plaintiff,

5 v.

6 DEBBIE ASUNCION,
7 Defendant.

Case No. [16-cv-07167-JD](#)

CERTIFICATE OF SERVICE

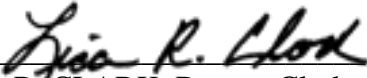
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on February 6, 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 Harold Carter
18 G13886
19 CSP Lancaster
P.O. Box 4670
Lancaster, CA 93539

20
21 Dated: February 6, 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