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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES E. CANADA,
Plaintiff,
v.
JOEL MARTINEZ,
Defendant.

Case No. [17-cv-01048-JD](#)

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

Re: Dkt. Nos. 2, 4

James Canada, 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 indecent exposure and one count of annoying or molesting a child. *People v. Canada*, No. A142597, 2015 WL 5895456, at *1 (Cal. Ct. App. Oct 8, 2015). The California Court of Appeal affirmed the conviction. *Id.* The California Supreme Court denied review.

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 habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court

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

6 **LEGAL CLAIMS**

7 Petitioner’s sole ground for federal habeas relief is that the trial court erred in denying his
8 right to represent himself pursuant to *Faretta v. California*, 422 U.S. 806 (1975). Liberally
9 construed, this claim is sufficient to require a response.

10 **CONCLUSION**

11 1. Leave to proceed in forma pauperis (Docket Nos. 2, 4) is **GRANTED**.

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

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

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

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

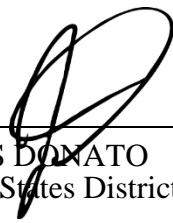
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and respondent shall file with the Court and serve on petitioner a reply within fourteen (14) days of receipt of any opposition.

5. 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: April 13, 2017



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JAMES E. CANADA,
4 Plaintiff,

5 v.

6 JOEL MARTINEZ,
7 Defendant.

Case No. [17-cv-01048-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.

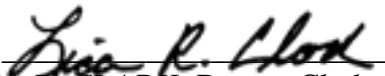
11 That on April 13, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
12 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
14 receptacle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

15 Prisoner Trust Accounts Office
16 James E. Canada
AM1244
17 5150 O'Byrnes Ferry Road
Jamestown, CA 95327

18 James E. Canada
19 AM1244
20 5150 O'Byrnes Ferry Road
Jamestown, CA 95327

21 Dated: April 13, 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