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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ETELBERTO VASQUEZ-ZAPATA,

No. C 17-2820 WHA (PR)

Petitioner,

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

v.

KELLY SANTORO,

(Dkt. No. 4)

Respondent.

INTRODUCTION

Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 challenging his state court conviction. His motion for leave to proceed in forma pauperis is **GRANTED**. For the reasons discussed below, respondent is ordered to show cause why the petition should not be granted.

STATEMENT

Petitioner was convicted in Monterey County Superior Court of first-degree murder and sentenced to a term of 26 years in state prison. His appeals to the California Court of Appeals and the California Supreme Court were denied. Thereafter, petitioner filed the instant federal petition.

ANALYSIS

A. 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

1 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ
2 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state
3 court must “specify all the grounds for relief which are available to the petitioner ... and shall
4 set forth in summary form the facts supporting each of the grounds thus specified.” Rule 2(c) of
5 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. “[N]otice’ pleading is not
6 sufficient, for the petition is expected to state facts that point to a ‘real possibility of
7 constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
8 688, 689 (1st Cir. 1970)).

9 **B. LEGAL CLAIMS**

10 Petitioner claims that: (1) his trial counsel was ineffective in failing to object to a
11 limiting instruction to the jury; (2) his trial counsel was ineffective in failing to object to
12 prosecutorial misconduct; (3) his trial counsel was ineffective in failing to secure a jury
13 instruction on voluntary intoxication; (4) his Sixth Amendment rights were violated by the
14 omission of instructions on the prosecutor’s burden to disprove self-defense and voluntary
15 manslaughter; and (5) the cumulative effect of the foregoing errors rendered the trial
16 fundamentally unfair. When liberally construed, these claim warrant a response.

17 **CONCLUSION**

18 1. The clerk shall mail a copy of this order and the petition with all attachments to the
19 respondent and the respondent's attorney, the Attorney General of the State of California. The
20 clerk shall also serve a copy of this order on the petitioner.

21 2. Respondent shall file with the court and serve on petitioner, within **sixty-three (63)**
22 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
23 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
24 granted based on the claim found cognizable herein. Respondent shall file with the answer and
25 serve on petitioner a copy of all portions of the state prison disciplinary proceedings that are
26 relevant to a determination of the issues presented by the petition.

27 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
28 court and serving it on respondent within **twenty-eight days** of the date the answer is filed.


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3. Respondent may file, within **sixty-three (63) days**, a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within **twenty-eight days** of the date the motion is filed, and respondent shall file with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is filed.

4. 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: July 14 , 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE