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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEON E. FERGUSON,
Plaintiff,
v.
TOMMY WONG,
Defendant.

Case No. [17-cv-06904-JSC](#)

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO
PROCEED IN FORMA
PAUPERIS; DENYING
APPOINTMENT OF COUNSEL**

Re: Dkt. Nos. 2, 3

INTRODUCTION

Petitioner, a prisoner of the State of California proceeding pro se, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his convictions and sentence in state court.¹ Petitioner’s application for leave to proceed in forma pauperis is GRANTED due to Petitioner’s lack of funds. Because the petition states cognizable grounds for federal habeas relief, a response from Respondent is warranted.

BACKGROUND

In 2015, Petitioner was convicted in Contra Costa County Superior Court of multiple counts of robbery, kidnapping, sexual battery, and firearms possession based upon a “home invasion” robbery and the robbery of a jewelry store the next day. He was sentenced to a term of 46 years to life in state prison. On appeal, the California Court of Appeal affirmed in part and

¹ Petitioner has consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 1 at 6.)

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reversed in part the convictions and sentence, and the California Supreme Court denied review.
Petitioner then filed the instant federal petition.

DISCUSSION

I. Standard of Review

This Court may entertain a petition for a 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). It 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.” *Id.* § 2243.

II. Legal Claims

In his first claim, Petitioner argues that his convictions for kidnapping violated his right to due process because they were not supported by sufficient evidence. He also argues that the sentencing provision for kidnapping codified in California Penal Code Section 209(b) is unconstitutionally vague and violates due process under *Johnson v. United States*, 535 S.Ct. 2551 (2015). In his second claim, he argues that the trial court violated his right to due process by excluding evidence offered by the defense expert on eyewitness testimony. These claims, when liberally construed, present cognizable bases for federal habeas relief.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve a Magistrate Judge jurisdiction consent form, a copy of this Order, and the petition, and all attachments thereto, on Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this Order on Petitioner.

1 2. Respondent shall complete and file the Magistrate Judge jurisdiction consent form in
2 accordance with the deadline provided on the form.

3 3. Respondent shall also file with the Court and serve on Petitioner, within **ninety-one (91)**
4 **days** of the date this Order is issued, 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. If Petitioner wishes to respond to the answer, he shall do so by
9 filing a traverse (a reply) with the Court and serving it on Respondent within **twenty-eight (28)**
10 **days** of the date the answer is filed.
11

12 4. Respondent may, within **ninety-one (91) days** of the date this Order is issued, file a
13 motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory
14 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such
15 a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement
16 of non-opposition within **twenty-eight (28)** days of the date the motion is filed, and Respondent
17 shall file with the Court and serve on Petitioner a reply within **fourteen (14)** days of the date any
18 opposition is filed.
19

20 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
21 informed of any change of address by filing a separate paper captioned "Notice of Change of
22 Address." He must comply with the Court's orders in a timely fashion. Failure to do so may
23 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
24 Procedure 41(b).
25

26 6. Leave to proceed in forma pauperis is GRANTED due to Petitioner's lack of funds.
27 Petitioner's request for appointment of counsel is DENIED because there are no extraordinary
28 circumstances warranting such appointment, Petitioner has proven able to present his claims, and

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there is no need for an evidentiary hearing at this time. Should these circumstances change and the Court finds that appointment of counsel for Petitioner is warranted, the Court will act on its own to appoint counsel for Petitioner. Petitioner need not continue to request counsel.

IT IS SO ORDERED.

Dated: January 25, 2018


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEON E. FERGUSON,
Plaintiff,

v.

TOMMY WONG,
Defendant.

Case No. [17-cv-06904-JSC](#)

CERTIFICATE OF SERVICE

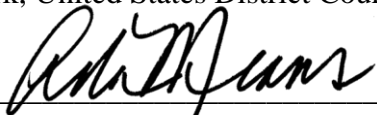
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 25, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Leon E. Ferguson ID: AW2634
Substance Abuse Treatment Facility and State Prison
900 Quebec Avenue
Corcoran, CA 93212

Dated: January 25, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY