

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

CARLOS R. FRANCIS,
Petitioner,
v.
M. E. SPEARMAN,
Respondent.

Case No. [18-cv-01326-LB](#)

ORDER TO SHOW CAUSE

Re: ECF No. 1

INTRODUCTION

Carlos R. Francis, a prisoner housed at the High Desert State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He consented to proceed before a magistrate judge. (ECF No. 1 at 9.)¹ His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. This order requires the respondent to file an answer to the petition.

STATEMENT

The petition provides the following information: After a jury trial in Contra Costa County Superior Court, Mr. Francis was convicted of attempted murder, shooting at an occupied motor

¹ Record citations refer to material in the Electronic Case File (“ECF”); pinpoint cites are to the ECF-generated page numbers at the top of the documents.

1 vehicle, shooting from a motor vehicle, and active participation in a criminal street gang. On
2 January 11, 2013, he was sentenced to 34 years to life in prison.

3 Mr. Francis appealed. The California Court of Appeal affirmed his conviction in 2013. The
4 California Supreme Court denied his petition for review in 2017. He apparently did not file any
5 post-conviction petitions for collateral review in state court.

6 **ANALYSIS**

7 This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody
8 pursuant to the judgment of a State court only on the ground that he is in custody in violation of
9 the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court
10 considering an application for a writ of habeas corpus shall “award the writ or issue an order
11 directing the respondent to show cause why the writ should not be granted, unless it appears from
12 the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

13 The petition contains two claims for relief. First, the petition alleges that the jury instruction on
14 intent violated due process by relieving the State of the burden of proving every element beyond a
15 reasonable doubt. Second, the petition alleges that Mr. Francis’ right to due process was violated
16 because there was insufficient evidence to support the conviction on count 7 for active
17 participation in a criminal street gang. Liberally construed, the claims are cognizable in a federal
18 habeas action.

19 **CONCLUSION**

20 For the foregoing reasons,

- 21 1. The petition warrants a response.
- 22 2. The clerk shall serve by mail a copy of this order and the petition upon the respondent and
23 the respondent's attorney, the Attorney General of the State of California. The clerk also shall
24 serve a copy of this order on the petitioner.
- 25 3. The clerk also shall serve a copy of the “consent or declination to magistrate judge
26 jurisdiction” form upon the respondent and the respondent's attorney, the Attorney General of the
27 State of California.
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4. The respondent must file and serve upon the petitioner, on or before **May 11, 2018**, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. The respondent must file with the answer a copy of all portions of the court proceedings that have been transcribed previously and that are relevant to a determination of the issues presented by the petitioner.

5. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the court and serving it on the respondent on or before **June 8, 2018**.

6. The petitioner is responsible for prosecuting this case. The petitioner must promptly keep the court informed of any change of address and must comply with the court's orders in a timely fashion.

7. The petitioner is cautioned that he must include the case name and case number for this case on the first page of any document he submits to the court for consideration in this case.

IT IS SO ORDERED.

Dated: March 5, 2018



LAUREL BEELER
United States Magistrate Judge