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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BODHI TREE,  
Petitioner,  
v.  
JIM ROBERTSON,  
Respondent.

Case No. [18-cv-01470-JSC](#)

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

Dkt. No. 5

**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 sentence.<sup>1</sup> 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 2014, Petitioner was convicted in Humboldt County Superior Court of two counts of second-degree murder and one count of attempted first-degree murder. The trial court sentenced him to a term of 112 years to life in state prison based upon those convictions as well as sentence enhancements for the use of firearms. On appeal, the California Court of Appeal affirmed the judgment. The California Supreme Court denied a petition for review. Petitioner also filed a

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

1 petition for a writ of habeas corpus in the Humboldt County Superior Court challenging the  
2 firearms enhancements. Petitioner then filed the instant federal petition.

3 **DISCUSSION**

4 I. Standard of Review

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

11  
12 II. Legal Claims

13 Petitioner makes the following claims: (1) the prosecution withheld material evidence from  
14 the defense; (2) the trial court erred by admitting evidence from “jailhouse informants;” and (3)  
15 the trial court erred by admitting DNA evidence. These claims, when liberally construed, present  
16 cognizable grounds for federal habeas relief.  
17

18 **CONCLUSION**

19 For the foregoing reasons and for good cause shown:

20 1. The Clerk shall serve a Magistrate Judge jurisdiction consent form, a copy of this  
21 Order, and the petition, and all attachments thereto, on Respondent and Respondent’s attorney, the  
22 Attorney General of the State of California. The Clerk also shall serve a copy of this Order on  
23 Petitioner.  
24

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

27 3. Respondent shall also file with the Court and serve on Petitioner, within **ninety-one (91)**  
28 **days** of the date this Order is issued, an answer conforming in all respects to Rule 5 of the Rules

1 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.  
2 Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state  
3 trial record that have been transcribed previously and that are relevant to a determination of the  
4 issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by  
5 filing a traverse (a reply) with the Court and serving it on Respondent within **twenty-eight (28)**  
6 **days** of the date the answer is filed.

7  
8 4. Respondent may, within **ninety-one (91) days** of the date this Order is issued, file a  
9 motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory  
10 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such  
11 a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement  
12 of non-opposition within **twenty-eight (28) days** of the date the motion is filed, and Respondent  
13 shall file with the Court and serve on Petitioner a reply within **fourteen (14) days** of the date any  
14 opposition is filed.

15  
16 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court  
17 informed of any change of address by filing a separate paper captioned "Notice of Change of  
18 Address." He must comply with the Court's orders in a timely fashion. Failure to do so may  
19 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil  
20 Procedure 41(b).

21 **IT IS SO ORDERED.**

22  
23 Dated: April 19, 2018

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26 JACQUELINE SCOTT CORLEY  
27 United States Magistrate Judge  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BODHI TREE,  
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JIM ROBERTSON,  
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**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 April 19, 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.

Bodhi Tree ID: AV0116  
Pelican Bay State Prison  
P.O. Box 7500  
Crescent City, CA 95532-7000

Dated: April 19, 2018

Susan Y. Soong  
Clerk, United States District Court

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