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United States District Court  
Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DERRICK A. WARE,  
Petitioner,  
  
v.  
  
C. KOENIG,  
Respondent.

Case No. [21-cv-01069-JD](#)

**ORDER FOR RESPONDENT TO  
SHOW CAUSE**

Re: Dkt. No. 2

Derrick Ware, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Contra Costa County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d).

**BACKGROUND**

Petitioner was found guilty by a jury of kidnapping for sexual purposes as well as several other sexual offenses and related enhancements. *People v. Ware*, No. A142909, 2018 WL 6718506, at \*1 (Cal. Ct. App. Dec. 21, 2018). Petitioner was sentenced to 100 years to life in prison. *Id.* at 2. The California Court of Appeal affirmed the conviction. *Id.* at 1. The California Supreme Court denied review. Petition at 3 Petitioner’s state habeas petitions were all denied. *Id.* at 3-4.

**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

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

### 8 LEGAL CLAIMS

9 As grounds for federal habeas relief, petitioner asserts that<sup>1</sup>: (1) the prosecution failed to  
 10 disclose favorable and impeachment evidence and the trial court erred in ruling that the  
 11 prosecution met its discovery obligations (Petition at 7, 65); (2) his rights were denied in a hearing  
 12 regarding conflicts between a codefendant’s attorney and the prosecution and the violation of a  
 13 joint defense agreement (Petition at 70); (3) the trial court issued erroneous jury instructions  
 14 regarding the victim and consent and intoxication (Petition at 80); (4) the jury repeatedly observed  
 15 him in shackles and the trial court erred by not declaring a mistrial and by issuing erroneous jury  
 16 instructions regarding shackling (Petition at 83, 91); (5) the trial court erred by failing to inquire of  
 17 jurors who observed him in shackles and also heard a deputy district attorney discussing the case  
 18 in the hallway (Petition at 93); (6) there was juror misconduct (Petition at 95); (7) the trial court  
 19 erred in denying expert evidence presented by the defense (Petition at 98); and (8) and the trial  
 20 court erred by issuing a jury instruction that improperly bolstered the victim’s credibility (Petition  
 21 at 105). Liberally construed, these claims are sufficient to require a response.

### 22 CONCLUSION

23 1. The motion to proceed in forma pauperis (Docket No. 2) is **GRANTED**. The clerk  
 24 shall serve by electronic mail a copy of this order on the Attorney General of the State of  
 25 California at **SFAWTParalegals@doj.ca.gov**. The clerk also shall serve a copy of this order on  
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28 <sup>1</sup> The Court has grouped similar claims together.

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1 petitioner by regular mail. Respondent can view the petition on the electronic docket (Docket No.  
2 1).

3 2. Respondent shall file with the Court and serve on petitioner, within sixty (60) days  
4 of the issuance of this order, 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.

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

11 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
12 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section  
13 2254 Cases. If respondent files such a motion, it is due sixty (60) days from the date this order is  
14 entered. If a motion is filed, petitioner shall file with the Court and serve on respondent an  
15 opposition or statement of non-opposition within twenty-eight (28) days of receipt of the motion,  
16 and respondent shall file with the Court and serve on petitioner a reply within fourteen (14) days  
17 of receipt of any opposition.

18 4. Petitioner is reminded that all communications with the Court must be served on  
19 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep  
20 the Court informed of any change of address and must comply with the Court's orders in a timely  
21 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
22 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.  
23 1997) (Rule 41(b) applicable in habeas cases).

24 **IT IS SO ORDERED.**

25 Dated: April 26, 2021

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JAMES DONATO  
United States District Judge