

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL CEDRIC GUESS,

Petitioner,

No. C 09-2117 PJH (PR)

vs.

ORDER TO SHOW CAUSE

M. EVANS, Warden,

Respondent.
/

Petitioner, a California prisoner currently incarcerated at Folsom State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Venue is proper because the conviction was obtained in Santa Clara County, which is in this district. See 28 U.S.C. § 2241(d).

DISCUSSION**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 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C.

1 foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts
2 that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes
3 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which
4 appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon*
5 *v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,
6 concurring).

7 **B. Legal Claims**

8 A Santa Clara County jury convicted petitioner of attempting to pimp a prostitute
9 under the age of sixteen and aiding and abetting a lewd act without force or duress. He
10 was sentenced to nine years in prison. He claims to have exhausted these issues on direct
11 appeal.

12 As grounds for federal habeas relief, petitioner asserts that: (1) His Sixth
13 Amendment rights were violated by the trial court’s denial of a motion for a continuance; (2)
14 his Confrontation Clause rights were violated by admission of pretrial testimony by the
15 victim and statements she made to a police officer; (3) counsel was ineffective failing to
16 preserve the Confrontation Clause claim as to admission of the out-of-court statements;
17 and (4) imposition of the upper term at sentencing violated his Sixth and Fourteenth
18 Amendment rights. These claims are sufficient to require a response.

19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown,

21 1. The clerk shall serve by regular mail a copy of this order and the petition and all
22 attachments thereto on respondent and respondent’s attorney, the Attorney General of the
23 State of California. The clerk also shall serve a copy of this order on petitioner.

24 2. Respondent shall file with the court and serve on petitioner, within sixty days of
25 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
26 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
27 granted. Respondent shall file with the answer and serve on petitioner a copy of all
28 portions of the state trial record that have been transcribed previously and that are relevant

1 to a determination of the issues presented by the petition.

2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
3 the court and serving it on respondent within thirty days of his receipt of the answer.

4 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
5 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
6 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court
7 and serve on respondent an opposition or statement of non-opposition within thirty days of
8 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
9 within fifteen days of receipt of any opposition.

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

16 **IT IS SO ORDERED.**

17 Dated: June 12, 2009.



PHYLLIS J. HAMILTON
United States District Judge