

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ZACHARY TIBRE ROBEY,

Petitioner,

No. C 11-2054 PJH (PR)

vs.

**ORDER LIFTING STAY, REOPENING  
CASE AND FOR RESPONDENT TO  
SHOW CAUSE**

BRENDA CASH, Warden,

Respondent.

Petitioner, a California prisoner has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was assisted in preparing the petition by attorney Randi Covin. This case was stayed so petitioner could exhaust further claims, which have now been exhausted in a petition to the California Supreme Court and petitioner has filed an amended petition. Docket No. 8.

**BACKGROUND**

Petitioner was found guilty at trial of two counts of first degree robbery, one count of dissuading a witness, one count of extortion and one count of possession of methamphetamine. He was sentenced to an aggregate term of twenty-five years in prison.

**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

1 application for a federal writ of habeas corpus filed by a prisoner who is in state custody  
2 pursuant to a judgment of a state court must “specify all the grounds for relief available to  
3 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules  
4 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the  
5 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”  
6 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.  
7 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject  
8 to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102,  
9 1108 (9th Cir. 1996) (Schroeder, J., concurring).

10 **B. Legal Claims**

11 As grounds for federal habeas relief, petitioner asserts: (1) ineffective assistance of  
12 trial counsel for failure to object to prosecutorial misconduct; (2) insufficient evidence to  
13 support the dissuading a witness conviction; (3) insufficient evidence to support the firearm  
14 enhancement; (4) ineffective assistance of appellate counsel regarding the admission of  
15 hearsay evidence; (5) ineffective assistance of appellate counsel regarding a jury  
16 instruction for extortion; and (6) ineffective assistance of appellate counsel regarding  
17 sentencing. Liberally construed, petitioner’s claims are sufficient to require a response.

18 **CONCLUSION**

19 1. The motion to amend (Docket No. 7) is **GRANTED**, the stay is lifted and the Clerk  
20 shall **REOPEN** the case.

21 2. 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 3. 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 4. 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, it is due fifty-six (56) days from the  
7 date this order is entered. If a motion is filed, petitioner shall file with the court and serve  
8 on respondent an opposition or statement of non-opposition within twenty-eight (28) days of  
9 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
10 within fourteen days of receipt of any opposition.

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

17 **IT IS SO ORDERED.**

18 Dated: April 9, 2013.



\_\_\_\_\_  
PHYLLIS J. HAMILTON  
United States District Judge

19  
20  
21 G:\PRO-SE\PJH\HC.11\Robey2054.osc.wpd  
22  
23  
24  
25  
26  
27  
28