

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION

5 LARRY LATIMORE,
6
7 Petitioner,

8 vs.

9 CLARK E. DUCART, Warden, California
10 State Prison, Pelican Bay,¹
11 Respondent.

Case No: C 11-5527 SBA

ORDER TO SHOW CAUSE

12 Following a jury trial in the Alameda County Superior Court, Petitioner Larry
13 Latimore was convicted of: kidnapping to commit robbery (Count One), Cal. Pen. Code,
14 § 209(b)(1); second degree robbery (Count Two), *id.* § 211; and assault with a semi-
15 automatic firearm (Count Three), *id.* § 245(b). A firearm use enhancement, *id.*
16 § 12022.5(a)(1), was found true as to all counts; firearm enhancements, *id.* § 12022.53(b) &
17 (c), were found true as to Count Two; and a § 12022.53(b) enhancement was found true as
18 to Count One.

19 Through counsel, Petitioner has filed a Petition for Writ of Habeas Corpus, pursuant
20 to 28 U.S.C. § 2254. He alleges various claims of instructional error and for insufficiency
21 of the evidence. It does not appear from the face of the petition that it is without merit.
22 Good cause appearing, the Court hereby issues the following orders:

23 1. The Clerk of the Court shall serve a copy of this Order and the petition and all
24 attachments thereto upon Respondent and Respondent's attorney, the Attorney General of
25 the State of California. The Clerk shall also serve a copy of this Order on Petitioner's
26

27 ¹ Clark E. Ducart, the current warden of the prison where Petitioner is incarcerated,
28 has been substituted as Respondent, pursuant to Rule 25(d) of the Federal Rules of Civil
Procedure.

1 counsel of record: Robert Joseph Beles, Law Offices of Robert J. Beles, One Kaiser Plaza,
2 Suite 2300, Oakland, CA 94612.

3 2. Respondent shall file with this Court and serve upon Petitioner, within sixty
4 (60) days of the issuance of this Order, an Answer conforming in all respects to Rule 5 of
5 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
6 should not be issued. Respondent shall file with the Answer a copy of all portions of the
7 relevant state records that have been transcribed previously and that are relevant to a
8 determination of the issues presented by the petition.

9 3. If Petitioner wishes to respond to the Answer, he shall do so by filing a
10 Traverse with the Court and serving it on Respondent within thirty (30) days of his receipt
11 of the Answer. Should Petitioner fail to do so, the petition will be deemed submitted and
12 ready for decision thirty (30) days after the date Petitioner is served with Respondent's
13 Answer.


14 4. Respondent may file with this Court and serve upon Petitioner, within sixty
15 (60) days of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of
16 an Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
17 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
18 and serve on Respondent an opposition or statement of non-opposition to the motion within
19 twenty-eight (28) days of receipt of the motion, and Respondent shall file with the Court
20 and serve on Petitioner a reply within fourteen (14) days of receipt of any opposition.

21 5. Petitioner must also serve on Respondent's counsel all communications with
22 the Court by mailing a true copy of the document to Respondent's counsel.

23 6. Extensions of time are not favored, though reasonable extensions will be
24 granted. Any motion for an extension of time must be filed no later than fourteen (14) days
25 prior to the deadline sought to be extended.

26 IT IS SO ORDERED.

27 Dated: April 17, 2014

28 
SAUNDRA BROWN ARMSTRONG
United States District Judge