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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LAWRENCE S. BROWN,

Petitioner,

vs.

CYNTHIA TAMPKINS,

Respondent.

No. C 13-0016 PJH (PR)

**ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS
AND FOR PETITIONER TO SHOW
CAUSE WHY PETITION SHOULD
NOT BE DISMISSED**

Petitioner, a California prisoner currently incarcerated at the California Rehabilitation Center has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also applied for leave to proceed in forma pauperis. Petitioner was convicted in Monterey County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d). Petitioner was sentenced to a term of six years for burglary and other related counts.

According to the petition, the state appeal ended with denial of a petition for review on January 17, 2007. Docket No. 2 at 15. Petitioner has also included an opinion from the Monterey County Superior Court that denied a state habeas petition on March 28, 2012. *Id.* at 20. The Superior Court denied that petition which alleged petitioner's appellate attorney rendered ineffective assistance of counsel noting that petitioner previously raised the same claim in prior habeas petition that had been denied on December 8, 2008. *Id.* The petition was therefore denied as untimely and successive. *Id.* Petitioner requests this court to look beyond the procedural default and untimeliness issues as he states he did not know he could raise these issues. *Id.* at 2. However, it seems that petitioner did in fact previously raise these issues in the prior habeas petition that was denied by the Superior

1 Court in 2008. Petitioner shall show cause why this federal petition should not be
2 dismissed as untimely and procedurally defaulted.

3 **CONCLUSION**

4 1. Leave to proceed in forma pauperis (Docket No. 5) is **GRANTED**.

5 2. Petitioner shall show cause by **February 21, 2013**, why this petition should not
6 be dismissed as untimely and procedurally defaulted. If he does not, the case will be
7 dismissed.

8 **IT IS SO ORDERED.**

9 Dated: January 28, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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