

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO TORRES,  
Petitioner,  
v.  
SHAWN HATTON,  
Respondent.

Case No. [17-cv-04332-PJH](#)

**ORDER LIFTING STAY AND FOR  
RESPONDENT TO SHOW CAUSE**

Petitioner, a state prisoner, filed a pro se writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition (Docket No. 16) was stayed so petitioner could exhaust further claims. Petitioner now seeks to lift the stay.

**BACKGROUND**

It appears that after petitioner’s conviction was reversed by the California Court of Appeal, petitioner pled guilty to several counts on February 5, 2015. It does not appear that he filed a direct appeal of his conviction. Petitioner did file more than twenty state habeas petitions and writs of mandate. A few of the petitions were to the California Supreme Court and petitioner indicates that his claims are now exhausted.<sup>1</sup>

**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

---

<sup>1</sup> If the claims have not been properly exhausted, respondent may raise the issue in a motion to dismiss.

1 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
2 § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet  
3 heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An  
4 application for a federal writ of habeas corpus filed by a prisoner who is in state custody  
5 pursuant to a judgment of a state court must “specify all the grounds for relief available to  
6 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules  
7 Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the  
8 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”  
9 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.  
10 1970)).

### 11 **LEGAL CLAIMS**

12 As grounds for federal habeas relief, petitioner asserts that: (1) he is actually  
13 innocent; (2) counsel was ineffective with respect to his plea and failed to provide  
14 petitioner with certain paperwork; (3) his plea agreement was violated; (4) there was a  
15 violation of *Brady v. Maryland*, 373 U.S. 83 (1963); and (5) he received an illegal  
16 sentence. Liberally construed, the final four claims are sufficient to require a response,  
17 but the first claim regarding actual innocence is dismissed.

18 In *Herrera v. Collins*, 506 U.S. 390, 400 (1993), the Court assumed without  
19 deciding that “in a capital case a truly persuasive demonstration of ‘actual innocence’  
20 made after trial would render the execution of a defendant unconstitutional, and warrant  
21 federal habeas relief if there were no state avenue open to process such a claim.”  
22 *Herrera*, 506 U.S. at 417. The Court has declined to answer the question left open in  
23 *Herrera* and hold that freestanding actual innocence claims (i.e., claims in which the  
24 petitioner argues that the evidence sufficiently establishes his innocence, irrespective of  
25 any constitutional error at trial or sentencing) are possible. See *House v. Bell*, 547 U.S.  
26 518, 554-55 (2006).  
27  
28



1 and serve on petitioner a reply within fourteen (14) days of receipt of any opposition.

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

9 **IT IS SO ORDERED.**

10 Dated: July 30, 2018



---

11  
12  
13 PHYLLIS J. HAMILTON  
United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

MARIO TORRES,  
Plaintiff,

v.

SHAWN HATTON,  
Defendant.

Case No. [17-cv-04332-PJH](#)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 30, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Mario Torres ID: AR3573  
Corr. Training Facility  
PO Box 705  
Soledad, CA 93960

Dated: July 30, 2018

Susan Y. Soong  
Clerk, United States District Court



By: \_\_\_\_\_  
Kelly Collins, Deputy Clerk to the  
Honorable PHYLLIS J. HAMILTON