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28E-FILED on 1/5/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAUL CAMPOS,

No. C-08-03750 RMW

Petitioner,

ORDER TO SHOW CAUSE

v.

ROBERT HOREL, Warden

Respondent.

Petitioner a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court will require respondent to show cause why a writ of habeas corpus should not be granted.

I. BACKGROUND

Petitioner was convicted of four counts of first degree murder, attempted robbery and residential burglary in San Mateo Superior Court. On February 25, 2005, petitioner was sentenced to an aggregate term of life without possibility of parol with an additional term of twenty years. Petitioner appealed his conviction to the California Court of Appeal, First Appellate District, which on February 27, 2007 affirmed his convictions. On May 9, 2007 review was denied by the California Supreme Court. The instant petition for habeas corpus was filed in this court on August 5, 2008.

II. ANALYSIS

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "on behalf of a person in

1 custody pursuant to the judgment of a state court only on the ground that he is in custody in violation
2 of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*,
3 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order directing the
4 respondent to show cause why the writ should not be granted, unless it appears from the application
5 that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

6 **B. Petitioner's Claims**

7 As grounds for federal habeas relief petitioner claims that incriminating statements he made
8 while in effective custody and without being given his *Miranda* rights were used against him in
9 violation of the Fifth Amendment. Petitioner claims *Miranda* warnings given to him were
10 ineffective because they were given after custodial interrogation had begun. It does not appear from
11 the face of the petition that petitioner's allegations are without merit.

12 **III. ORDER**


13 Good cause appearing, the court hereby issues the following orders:

14 1. The Clerk of the Court shall serve a copy of this order and the petition and all
15 attachments thereto upon respondent and respondent's attorney, the Attorney General of the State of
16 California.

17 2. Respondent shall file with the court, within sixty (60) days of the issuance of this
18 order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
19 showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the
20 answer a copy of all portions of the state record that have been transcribed previously and that are
21 relevant to a determination of the issues presented by the petition. If petitioner wishes to respond to
22 the answer, he shall do so by filing a traverse within thirty (30) days of the filing of the answer.

23 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
24 as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases
25 within sixty (60) days of the issuance of this order. If respondent files such a motion, petitioner shall
26 file with the court an opposition or a statement of non-opposition within thirty (30) days of the filing
27 of the motion, and respondent shall file with the court a reply within fifteen days of the filing of any
28 opposition.

Dated: 12/17/09


RONALD M. WHYTE
United States District Judge

