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E-FILED on 8/6/10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

REGINALD JEFFERIES,
Petitioner,
v.
ANTHONY HEDGPETH, Warden, Salinas
Valley State Prison, California,
Respondent.
PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

No. C-09-01058 RMW

ORDER TO SHOW CAUSE

[Re Docket No. 1]

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

On November 30, 2005, a jury found petitioner guilty of murder in the first degree and found all enhancement clauses to be true. Petitioner was sentenced to fifty (50) years to life in state prison. On December 12, 2007, the California Supreme Court denied review of petitioner's direct appeal. The instant petition for habeas corpus was filed in this court on March 11, 2009.

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II. ANALYSIS

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). A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

B. Petitioner's Claims

Petitioner states two grounds for federal habeas relief. First, petitioner claims his rights under the Fifth, Sixth, and Fourteenth Amendment were violated by supplemental jury instructions that diluted the prosecution's burden of proof on the key element of deliberation and premeditation. Second, petitioner claims his Fifth and Fourteenth Amendment due process rights were violated by prosecutorial misconduct in the closing argument when the prosecutor: (1) urged the jury to solve social problems by finding petitioner guilty, (2) argued that petitioner did not deserve due process and fair treatment, and (3) attacked defense counsel by denigrating the defense as a sham and stating that petitioner was "guilty as sin." It does not appear from the face of the petition that it is without merit.

III. ORDER

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

1. The Clerk of the Court shall serve a copy of this order and the petition and all attachments thereto upon respondent and respondent's attorney, the Attorney General of the State of California.
2. Respondent shall file with the court, within sixty (60) days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer a copy of all portions of the state record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If petitioner wishes to respond to

1 the answer, he shall do so by filing a traverse with the court and serving it on respondent within
2 thirty (30) days of his receipt of the answer.

3 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
4 as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.
5 If respondent files such a motion, petitioner shall file with the court and serve on respondent an
6 opposition or statement of non-opposition to the motion within thirty (30) days of receipt of the
7 motion, and respondent shall file with the court and serve on petitioner a reply within fifteen (15)
8 days of receipt of any opposition.

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DATED: 8/6/10



RONALD M. WHYTE
United States District Judge