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United States District Court
For the Northern District of California

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

CHANH VAN NGUYEN,)	No. C 10-02148 JW (PR)
Petitioner,)	ORDER TO SHOW CAUSE
vs.)	
D. K. SISTO, Warden,)	
Respondent.)	
_____)	

Petitioner, a California state prisoner, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. In accordance with the court order of dismissal with leave to amend, Petitioner has filed an amended petition. (Docket No. 6.) The Court will construe the document filed a few days thereafter as a supplement thereto. (Docket No. 7.)

BACKGROUND

According to the amended petition, petitioner is currently in custody at Folsom State Prison after state proceedings on the charge of first degree murder. (Am. Pet. at 2-3.) The information provided on the amended petition is ambiguous as to whether the matter went to trial or settled after a plea agreement was reached.

1 (Id. at 3.) Petitioner appealed the sentence, and the state appellate and high courts
2 ordered reduced sentencing in 2007. (Id. at 3.)

3 Petitioner filed the instant federal habeas petition on May 18, 2010.

4 5 DISCUSSION

6 A. Standard of Review

7 This court may entertain a petition for a writ of habeas corpus “in behalf of a
8 person in custody pursuant to the judgment of a State court only on the ground that
9 he is in custody in violation of the Constitution or laws or treaties of the United
10 States.” 28 U.S.C. § 2254(a).

11 It shall “award the writ or issue an order directing the respondent to show
12 cause why the writ should not be granted, unless it appears from the application that
13 the applicant or person detained is not entitled thereto.” Id. § 2243.

14 B. Legal Claims

15 Petitioner alleges that following claims as grounds for habeas relief: 1)
16 prosecutorial misconduct; 2) there was insufficient evidence to support a finding of
17 voluntary manslaughter; and 3) improper jury instructions with respect to
18 manslaughter. Liberally construed, these claims are cognizable under § 2254.

19 20 CONCLUSION

21 For the foregoing reasons and for good cause shown,

22 1. The clerk shall serve by certified mail a copy of this order and the
23 amended petition and all attachments thereto, (Docket Nos. 6 & 7), on respondent
24 and respondent’s attorney, the Attorney General of the State of California. The clerk
25 also shall serve a copy of this order on petitioner.

26 2. Respondent shall file with the court and serve on petitioner, within
27 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
28 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of

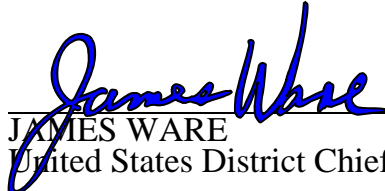
1 habeas corpus should not be issued. Respondent shall file with the answer and serve
2 on petitioner a copy of all portions of the state trial record that have been transcribed
3 previously and that are relevant to a determination of the issues presented by the
4 petition.

5 If petitioner wishes to respond to the answer, he shall do so by filing a
6 traverse with the court and serving it on respondent within **thirty (30) days** of his
7 receipt of the answer.

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

15 4. Petitioner is reminded that all communications with the court must be
16 served on respondent by mailing a true copy of the document to respondent's
17 counsel. Petitioner must also keep the court and all parties informed of any change
18 of address.

19
20 DATED: February 16, 2011


21 JAMES WARE
United States District Chief Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CHANH VAN NGUYEN,
Petitioner,

Case Number: CV10-02148 JW

CERTIFICATE OF SERVICE

v.

D.K. SISTO, Warden,
Respondent.

_____/

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 2/16/2011, 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.

Chanh Van Nguyen V-07324
Folsom State Prison
P. O. Box 950
Folsom, Ca 95763

Dated: 2/16/2011

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk