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

| | | |
|-----------------------|---|------------------------|
| RODNEY JEROME WOMACK, |) | No. C 11-1095 LHK (PR) |
| |) | |
| Petitioner, |) | ORDER TO SHOW CAUSE |
| |) | |
| v. |) | |
| |) | |
| WARDEN TIM V. VIRGA, |) | (Docket No. 3.) |
| |) | |
| Respondent. |) | |

Petitioner, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254,¹ challenging his 2002 conviction and sentence. Petitioner has paid the filing fee. The Court orders Respondent to show cause why a writ of habeas corpus should not be granted.

DISCUSSION

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

¹ Petitioner has also filed a notice of appeal and a motion for certificate of appealability. Neither pleading is applicable at this stage in the litigation. Accordingly, Petitioner’s motion for certificate of appealability is DENIED without prejudice.

1 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose*
2 *v. Hodges*, 423 U.S. 19, 21 (1975).

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

6 **B. Petitioner’s Claims**

7 Petitioner alleges that, on May 22, 2002, he entered into a plea agreement and pleaded no
8 contest to failing to register as a sex offender. Petitioner claims that he only agreed to plead no
9 contest because his public defender promised him that the Public Defender’s Office would file a
10 notice of appeal on his behalf and raise twelve specific issues. After Petitioner was convicted, no
11 one raised those issues on appeal. Liberally construed, Petitioner’s claim of ineffective
12 assistance of appellate counsel is cognizable. The Court orders Respondent to show cause why
13 the petition should not be granted as to the above issue.

14 **CONCLUSION**

15 1. Petitioner’s motion for certificate of appealability is DENIED without prejudice..

16 2. The Clerk shall serve by mail a copy of this order and the petition (docket no. 1)
17 and all attachments thereto upon the Respondent and the Respondent’s attorney, the Attorney
18 General of the State of California. The Clerk shall also serve a copy of this order on Petitioner.

19 3. Respondent shall file with the Court and serve on Petitioner, within **ninety days**
20 of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
21 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
22 granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of
23 the underlying state criminal record that have been transcribed previously and that are relevant to
24 a determination of the issues presented by the petition.

25 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
26 Court and serving it on Respondent within **thirty days** of the date the answer is filed.


27 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an
28 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section

1 2254 Cases within **ninety days** of the date this order is filed. If Respondent files such a motion,
2 Petitioner shall file with the court and serve on Respondent an opposition or statement of non-
3 opposition within **thirty days** of the date the motion is filed, and Respondent **shall** file with the
4 court and serve on Petitioner a reply within **fifteen days** of the date any opposition is filed.

5 5. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded that
6 all communications with the Court must be served on Respondent by mailing a true copy of the
7 document to Respondent's counsel. Petitioner must keep the court and all parties informed of
8 any change of address by filing a separate paper captioned "Notice of Change of Address." He
9 must comply with the Court's orders in a timely fashion. Failure to do so may result in the
10 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure
11 41(b).

12 IT IS SO ORDERED.

13 DATED: 4/24/11


LUCY H. KOH
United States District Judge