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

JUAN JOSE MORALES,
Petitioner,
Vs.

MIKE MCDONALD, Warden,
Respondent.

No. C 11-06656 EJD (PR)
ORDER TO SHOW CAUSE

Petitioner, a state parolee proceeding <u>pro se</u>, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee. (<u>See</u> Docket No. 1.)

## **BACKGROUND**

According to the petition, Petitioner was found guilty by a jury in Sonoma County Superior Court of several charges, including resisting an officer (Penal Code § 148), willful harm or injury to a child (Penal Code § 273a(a)), assault with a deadly weapon (Penal Code § 245(c)(2)), among other offenses. (Pet. at 2.) Petitioner was sentenced on May 28, 2009, to 24 years and 8 months in state prison. (Id.)

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Petitioner appealed his conviction. The state appellate court "resentenced and 'consolidate[d]' petition," and the state high court denied review in 2011. (Id. at 3.) Petitioner filed the instant federal habeas petition on December 27, 2011.

## **DISCUSSION**

#### A. Standard of Review

This court may entertain a petition for a 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).

It 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." <u>Id.</u> § 2243.

#### В. Legal Claims

Petitioner claims that he was appointed a new attorney on resentencing as his trial attorney had been disbarred. Petitioner claims that the new attorney rendered ineffective assistance on resentencing matters. Liberally construed, his claim is cognizable under § 2254 and merits an answer from Respondent.

## **CONCLUSION**

For the foregoing reasons and for good cause shown,

- 1. The Clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.
- 2. Respondent shall file with the court and serve on petitioner, 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

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habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial 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 the answer, he shall do so by filing a traverse with the Court and serving it on Respondent within thirty (30) days of his receipt of the answer.

- 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an opposition or statement of nonopposition within thirty (30) days of receipt of the motion, and Respondent shall file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt of any opposition.
- 4. Petitioner is reminded that all communications with the court must be served on Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must also keep the Court and all parties informed of any change of address.

DATED: 4/19/2012

United States District Judge

# UNITED STATES DISTRICT COURT

## FOR THE

# NORTHERN DISTRICT OF CALIFORNIA

JUAN JOSE MORALES,	Case Number: CV11-06656 EJD
Petitioner,	CERTIFICATE OF SERVICE
V.	
MIKE MCDONALD, Warden,	
Respondent.	
I, the undersigned, hereby certify that I Court, Northern District of California.	am an employee in the Office of the Clerk, U.S. District
attached, by placing said copy(ies) in a	, I SERVED a true and correct copy(ies) of the a postage paid envelope addressed to the person(s) avelope in the U.S. Mail, or by placing said copy(ies) into ted in the Clerk's office.
Juan Jose Morales F44043 High Desert State Prison P.O. Box 300 Susanville, CA 96127	
Dated: 4/20/2012	-
	Richard W. Wieking, Clerk /s/ By: Elizabeth Garcia, Deputy Clerk