

FILED

FEB 06 2014

RICHARD M. VIZCARRA
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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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

RONALD WASON MIGUEL,

Petitioner,

vs.

CONNIE GIPSON,

Respondent.

No. C 12-0167 EJD (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding with counsel, 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.

BACKGROUND

According to the petition, Petitioner was found guilty after a jury trial in Santa Clara County Superior Court of 23 counts of sexual intercourse or sodomy with a minor ten years of age or younger and oral copulation or sexual penetration with a minor ten years of younger. (Pet. at 4-5.) Petitioner was sentenced to 445 years to life. (Pet. at 5.)

Petitioner appealed his conviction and the state appellate court affirmed the judgment. (Id.) The state high court denied review. (Id.)

Order to Show Cause

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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.” Id. § 2243.

B. Legal Claims

Petitioner’s sole ground for federal habeas relief asserts that the trial court improperly instructed the jury regarding some of the counts. Liberally construed, this claim is cognizable under § 2254 as a due process violation 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 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.

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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 non-opposition 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.

DATED: 2/5/14


EDWARD J. DAVILA
United States District Judge