

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

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

JOSEPH ALLEN MALOOF,)	No. C 12-01100 EJD (PR)
Petitioner,)	ORDER TO SHOW CAUSE
vs.)	
FRANK X. CHAVEZ, Warden,)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, 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. (See Docket No. 1.)

BACKGROUND

According to the petition, Petitioner pleaded guilty in Santa Clara County Superior Court to embezzlement, failure to provide travel services or make refunds, insufficient funds check, unlawful encumbrance of a trust account by a “Seller of Travel,” and money laundering. (Pet. at 2.) Petitioner was sentenced on December 10, 2008, to thirteen years in state prison. (Id.)

Petitioner appealed his conviction, and the state appellate court affirmed. (Id.)

1 at 3.) The state high court denied review. (Id.)

2 Petitioner filed the instant federal habeas petition on March 5, 2012.

3
4 **DISCUSSION**

5 A. Standard of Review

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

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

13 B. Legal Claims

14 Petitioner claims the following as grounds for federal habeas relief: (1) the
15 court considered dismissed charges in imposing consecutive sentences without
16 obtaining a waiver in violation of due process; (2) ineffective assistance of counsel
17 for failing to object to sentencing factors; (3) the trial court abused its discretion in
18 sentencing; (4) the trial court erred in using the same facts to impose an enhanced
19 sentence; and (5) ineffective assistance of counsel for failing to object to the trial
20 court’s use of the same facts in sentencing. Liberally construed, his claims are
21 cognizable under § 2254 and merit an answer from Respondent.

22
23 **CONCLUSION**

24 For the foregoing reasons and for good cause shown,

25 1. The Clerk shall serve by certified mail a copy of this order and the
26 petition and all attachments thereto on Respondent and Respondent’s attorney, the
27 Attorney General of the State of California. The Clerk also shall serve a copy of this
28 order on Petitioner.

1 2. Respondent shall file with the court and serve on petitioner, within
2 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
3 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
4 habeas corpus should not be issued. Respondent shall file with the answer and serve
5 on Petitioner a copy of all portions of the state trial record that have been transcribed
6 previously and that are relevant to a determination of the issues presented by the
7 petition.

8 If Petitioner wishes to respond to the answer, he shall do so by filing a
9 traverse with the Court and serving it on Respondent within **thirty (30) days** of his
10 receipt of the answer.

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

18 4. Petitioner is reminded that all communications with the court must be
19 served on Respondent by mailing a true copy of the document to Respondent's
20 counsel. Petitioner must also keep the Court and all parties informed of any change
21 of address.

22
23 DATED: 8/3/2012


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH ALLEN MALOOF,
Petitioner,

Case Number: CV12-01100 EJD
CERTIFICATE OF SERVICE

v.

FRANK X. CHAVEZ, 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 8/7/2012, 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.

Joseph Allen Maloof G45298
Sierra Conservation Center
5100 O'Byrnes Ferry Road
Jamestown, CA 95327

Dated: 8/7/2012

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