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

ANTHONY A. MERINO,)	No. C 12-03277 EJD (PR)
Petitioner,)	ORDER TO SHOW CAUSE
vs.)	
MATHEW CATE, et al.,)	
Respondents.)	
_____)	

Petitioner, a state parolee 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 was found guilty by a jury in San Francisco County Superior Court of committing a lewd and lascivious act, false imprisonment, indecent exposure, and lewd conduct in public. (Pet. at 2.) Petitioner was sentenced on May 20, 2009, to two years in state prison. (Id.)

Petitioner appealed his conviction, and the state appellate court affirmed. (Id. at 3.) The state high court denied review. (Id.)

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Petitioner filed the instant federal habeas petition on June 25, 2012.

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 claims the following as grounds for federal habeas relief: (1) the trial court erred in admitting evidence to show Petitioner’s propensity for committing sex offense, violating his right to due process and fair trial; (2) instructing the jury with CALCRIM 1191 violated Petitioner’s right to due process because it permitted a conviction based on an uncharged misconduct found true by a preponderance of the evidence; and (3) Petitioner’s right to confrontation was violated where the DNA expert’s testimony was based upon the analysis of a non-testifying criminalist. Liberally construed, his claims are cognizable under § 2254 and merit 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.

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: 10/2/2012


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY A. MERINO,
Petitioner,

Case Number: CV12-03277 EJD

CERTIFICATE OF SERVICE

v.

MATHEW CATE, et al.,
Respondents.

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 10/4/2012, 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.

Anthony A. Merino
P. O. Box 15756
San Francisco, CA 94115

Dated: 10/4/2012

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