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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

CHAD DIAS,	)	No. C 12-05146 EJD (PR)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE;
	)	GRANTING MOTION FOR LEAVE
vs.	)	TO PROCEED <i>IN FORMA PAUPERIS</i> ;
	)	DENYING APPOINTMENT OF
CONNIE GIPSON, Warden,	)	COUNSEL
	)	
Respondent.	)	
	)	
	)	
	)	
	)	
	)	(Docket Nos. 2 & 3)

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 filed a motion for leave to proceed in forma pauperis and a motion to appoint counsel. (Docket Nos. 2 and 3.)

**BACKGROUND**

According to the petition, Petitioner was found guilty by a jury in San Francisco County Superior Court of several charges, including murder, attempted murder and second degree robbery. (Pet. at 2.) Petitioner was sentenced to 32 years to life in state prison. (Id.)

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

1 3.) The state high court denied review. (Id.) Petitioner’s petition of habeas corpus was  
2 also denied by the California Supreme Court. (Id.)

3 Petitioner filed the instant federal habeas petition on October 3, 2012.

4  
5 **DISCUSSION**

6 A. Standard of Review

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

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

14 B. Legal Claims

15 Petitioner claims the following as grounds for federal habeas relief: (1) the trial  
16 court erred by denying his Wheeler/Batson motion; (2) trial counsel was ineffective for  
17 failing to present arguments regarding his prior trial on the same charge that resulted in  
18 a hung jury and for failing to lodge the transcripts from that trial; (3) trial counsel was  
19 ineffective for failing to properly counter the prosecution’s theory that Petitioner was  
20 guilty as an aider and abetter; and (4) the introduction of an aiding and abetting theory  
21 violated his right to Due Process, as the prosecution had previously taken the position  
22 that appellant was the shooter. Liberally construed, his claims are cognizable under §  
23 2254 and merit an answer from Respondent.

24 C. Counsel

25 The Sixth Amendment’s right to counsel does not apply in habeas corpus actions.  
26 See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867  
27 (1986). Unless an evidentiary hearing is required, the decision to appoint counsel is  
28 within the discretion of the district court. See Knaubert, 791 F.2d at 728; Bashor v.

1 Risley, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). An  
2 evidentiary hearing does not appear necessary at this time, and there are no exceptional  
3 circumstances to warrant appointment of counsel. Accordingly, Petitioner's motion for  
4 appointment of counsel is DENIED without prejudice to the Court's sua sponte  
5 reconsideration should the Court later find an evidentiary hearing necessary following  
6 consideration of the merits of Petitioner's claims.

7 **CONCLUSION**

8 For the foregoing reasons and for good cause shown,

9 1. Petitioner's motion for leave to proceed in forma pauperis, (Docket No.  
10 2), is GRANTED.

11 2. Petitioner's motion to appoint counsel, (Docket No. 3), is DENIED.

12 3. The Clerk shall serve by certified mail a copy of this order and the  
13 petition and all attachments thereto on Respondent and Respondent's attorney, the  
14 Attorney General of the State of California. The Clerk also shall serve a copy of this  
15 order on Petitioner.

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

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

25 5. Respondent may file a motion to dismiss on procedural grounds in lieu of  
26 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
27 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
28 with the Court and serve on Respondent an opposition or statement of non-opposition

1 within **thirty (30) days** of receipt of the motion, and Respondent shall file with the  
2 court and serve on Petitioner a reply within **fifteen (15) days** of receipt of any  
3 opposition.

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

8           This order terminates Docket Nos. 2 and 3.

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10 DATED: 12/6/2012

  
EDWARD J. DAVILA  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

CHAD DIAS,  
Plaintiff,

Case Number: CV12-05146 EJD

**CERTIFICATE OF SERVICE**

v.

CONNIE GIPSON et al,  
Defendant.

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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 December 6, 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.

Chad Dias G-44632 - 3a05-132U  
CSP, Corcoran (1)  
PO Box 3461  
Corcoran, CA 93212-3461

Dated: December 6, 2012

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