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FILED

JAN 08 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

KERRY NHEP,
Petitioner,

vs.

RON BARNES,
Respondent.

No. C 12-06226 EJD (PR)
ORDER TO SHOW CAUSE

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.

BACKGROUND

According to the petition, Petitioner was found guilty after a jury trial in Alameda County Superior Court of murder, attempted murder and assault with a firearm. (Pet. at 2.) Petitioner was sentenced to 75 years to life. (Id.)

Petitioner appealed his conviction, and the state appellate court reversed a gun enhancement but affirmed the remaining counts. (Id. at 3.) The state high court denied review. (Id.)

1 Petitioner filed the instant federal habeas petition on December 7, 2012.

2 DISCUSSION

3 A. Standard of Review

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

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

11 B. Legal Claims

12 Petitioner claims the following as grounds for federal habeas relief: (1) the Trial
13 Court erred by refusing Petitioner’s request for a jury instruction; (2) ineffective
14 assistance of counsel for failing to argue and request a jury instruction of aiding and
15 abetting; (3) prosecutorial misconduct; and (4) the Trial Court erroneously instructed
16 the jury and reduced the prosecution’s burden. Liberally construed, these claims are
17 cognizable under § 2254 and merit an answer from Respondent.

18 CONCLUSION

19 For the foregoing reasons and for good cause shown,

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

24 2. Respondent shall file with the court and serve on petitioner, within **sixty**
25 **(60) days** of the issuance of this order, an answer conforming in all respects to Rule 5
26 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas
27 corpus should not be issued. Respondent shall file with the answer and serve on
28 Petitioner a copy of all portions of the state trial record that have been transcribed

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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 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.

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: _____

1/7/13



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KERRY NHEP,

Petitioner,

v.

RON BARNES,

Respondent.

Case Number CV 12-06226 EJD (PR)

CERTIFICATE OF SERVICE

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 1/08/13, 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) inter-office delivery receptacle located in the Clerk's office.

Kerry Nhep
AB-3868
High Desert State Prison
P. O. Box 3030
Susanville, CA 96127

DATED: 1/08/13

Richard W. Wiekling, Clerk
By: Elizabeth Garcia, Deputy Clerk