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

GREGORY A. McFARLAND,

Petitioner,

vs.

RICK HILL,

Respondent.

No. C 13-00147 EJD (PR)

ORDER TO SHOW CAUSE;
GRANTING MOTION FOR LEAVE
TO PROCEED *IN FORMA PAUPERIS*

(Docket No. 2)

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. (Docket No. 2.)

BACKGROUND

According to the petition, Petitioner was found guilty of assault with a firearm and residential burglary after a jury trial in San Mateo County. (Pet. at 1.) Petitioner was sentenced to 10 years and four months in prison. (Id.)

Petitioner appealed his conviction, and the state appellate court affirmed. (Id. at 2.) The state high court denied review. (Id.)

Petitioner filed the instant federal habeas petition on December 17, 2012.

1 **DISCUSSION**

2 A. Standard of Review

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

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

10 B. Legal Claims

11 Petitioner claims the following ground for federal habeas relief: (1) his right to a
12 trial by an impartial jury was violated when the trial court failed to investigate jury
13 misconduct. Liberally construed, his claim is cognizable under § 2254 and merits an
14 answer from Respondent.

15
16 **CONCLUSION**

17 For the foregoing reasons and for good cause shown,

18 1. Petitioner’s motion for leave to proceed in forma pauperis, (Docket No.
19 2), is GRANTED.

20 2. 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 3. 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 of
26 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
27 should not be issued. Respondent shall file with the answer and serve on Petitioner a
28 copy of all portions of the state trial record that have been transcribed previously and

1 that are relevant to a determination of the issues presented by the petition.

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

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

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

16 This order terminates Docket No. 2.

17
18 DATED: 1/28/2013


EDWARD J. DAVILA
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GREGORY ANTHONY MCFARLAND,
Petitioner,

Case Number CV 13-00147 EJD (PR)

v.

CERTIFICATE OF SERVICE

RICK HILL,
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 1/29/2013, 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.

Gregory Anthony McFarland
AI-1206
Folsom State Prison
P.O. Box 950
Folsom, CA 95763

DATED: 1/29/2013

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