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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

JOSE GARCIA MEJIA,)	No. C 13-04692 EJD (PR)
)	
Petitioner,)	ORDER TO SHOW CAUSE;
)	GRANTING MOTION FOR LEAVE
v.)	TO PROCEED <i>IN FORMA</i>
)	<i>PAUPERIS</i>
)	
RALPH M. DIAZ, Warden,)	
)	
Respondent.)	(Docket No. 8)

Petitioner, a state prisoner, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 8.)

BACKGROUND

According to the petition, Petitioner pleaded guilty in Santa Clara County of multiple counts of sexual intercourse or sodomy with a child 10 years old or younger, along with other charges. (Pet. at 2.) Petitioner was sentenced to 75 years to life in 2008. (Id.)

Petitioner appealed his conviction, and the state appellate court affirmed. (Id. at 2.) The state high court denied review. (Id. at 3.)

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Petitioner filed the instant federal habeas petition on September 17, 2013.

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 habeas relief: (1) he was denied his rights to due process and equal protection of the law when the trial court failed to advise him properly and obtain proper waivers; and (2) the evidence does not support the conviction. Liberally construed, Petitioner’s claims are cognizable under § 2254 and merit an answer from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner’s motion for leave to proceed in forma pauperis, (Docket No. 8), is GRANTED.

2. 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.

3. Respondent shall file with the court and serve on Petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to

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Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed 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.

4. 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.

5. 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.

This order terminates Docket No. 8.

DATED: 4/9/2014


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSE GARCIA MEJIA,
Petitioner,

Case Number: CV13-04692 EJD

CERTIFICATE OF SERVICE

v.

RALPH M. DIAZ, 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 4/10/2014, 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.

Jose Garcia Mejia AF-0665
PO Box 5242
Corcoran, CA 93212

Dated: 4/10/2014

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