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

ROBERT G. HOWELL,)
)
 Petitioner,)
)
 vs.)
)
 WARDEN M. SPEARMAN,)
)
 Respondent.)
_____)

No. C 13-5176 RMW (PR)
ORDER TO SHOW CAUSE
(Docket No. 11.)

Petitioner, a state prisoner proceeding pro se, has filed an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

BACKGROUND

According to the petition, petitioner was convicted after pleading guilty in Sonoma County Superior Court. Petitioner unsuccessfully appealed his convictions to the California Court of Appeal and the California Supreme Court. Petitioner also filed unsuccessful state habeas petitions. Petitioner brought this underlying habeas action on November 6, 2013.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in

1 custody pursuant to the judgment of a state court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose
3 v. Hodges, 423 U.S. 19, 21 (1975).

4 A district court shall “award the writ or issue an order directing the respondent to show
5 cause why the writ should not be granted, unless it appears from the application that the
6 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

7 **B. Petitioner’s Claims**

8 As grounds for federal habeas relief, petitioner alleges that: (1) petitioner’s plea
9 agreement was breached and petitioner is being imprisoned longer than the agreed upon
10 sentence;¹ (2) trial counsel rendered ineffective assistance; and (3) appellate counsel rendered
11 ineffective assistance. Liberally construed, the court orders respondent to show cause why the
12 petition should not be granted.

13 To the extent that petitioner raises pre-plea claims of a violation of his speedy trial rights,
14 and counsel’s alleged errors that occurred prior to petitioner’s guilty plea, those claims are
15 waived. See United States v. Jackson, 697 F.3d 1141, 1144 (9th Cir. 2012) (by pleading guilty
16 defendant waived right to challenge pre-plea violation of Speedy Trial Act); Moran v. Godinez,
17 57 F.3d 690, 700 (9th Cir. 1994) (refusing to consider contention that petitioner’s attorneys were
18 ineffective because they failed to attempt to prevent the use of his confession as pre-plea
19 constitutional violation); Washington v. Sobina, 475 F.3d 162, 166 (3d Cir. 2007) (“[T]he right
20 to a speedy trial is non-jurisdictional, and is therefore waived by an unconditional and voluntary
21 guilty plea.”). Accordingly, those claims are dismissed with prejudice.

22 To the extent petitioner is requesting appointment of counsel, the request is **DENIED** for
23 want of exceptional circumstances. See Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997);
24 see also Lassiter v. Dep’t of Social Services, 452 U.S. 18, 25 (1981) (there is no constitutional
25 right to counsel in a civil case). This denial is without prejudice to the court’s sua sponte
26 appointment of counsel at a future date should the circumstances of this case warrant such

27
28 ¹ This claim encompasses petitioner’s Claims 1 and 2 as stated in his amended petition.

1 appointment.

2 **CONCLUSION**

3 1. The clerk shall serve by mail a copy of this order and the amended petition
4 (docket no. 9) and all attachments thereto upon the respondent and the respondent's attorney, the
5 Attorney General of the State of California. The clerk shall also serve a copy of this order on the
6 petitioner.

7 2. Respondent shall file with the court and serve on petitioner, within **sixty days** of
8 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
9 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
10 Respondent shall file with the answer and serve on petitioner a copy of all portions of the
11 underlying state criminal record that have been transcribed previously and that are relevant to a
12 determination of the issues presented by the petition.

13 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
14 court and serving it on respondent within **thirty days** of the date the answer is filed.

15 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
16 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
17 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,
18 petitioner shall file with the court and serve on respondent an opposition or statement of non-
19 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file
20 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is
21 filed.

22 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
23 all communications with the court must be served on respondent by mailing a true copy of the
24 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
25 change of address by filing a separate paper captioned "Notice of Change of Address." He must
26 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
27 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

28 This order terminates docket no. 11.

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IT IS SO ORDERED.

DATED: _____



RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT G HOWELL,
Plaintiff,

Case Number: CV13-05176 RMW

CERTIFICATE OF SERVICE

v.

SPEARMAN et al,
Defendant.

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 August 21, 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.

Robert G Howell V72092
F.D.-48L
Correctional Training Facility
PO Box 686
Soledad, CA 93960-0686

Dated: August 21, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk