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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACOB CHRISTIAN MULLAN,
Plaintiff,
v.
ERIC ARNOLD,
Defendant.

Case No. [15-cv-01003 NC](#)

ORDER OF SERVICE

Re: Dkt. No. 3

Petitioner Jacob Christian Mullan, a state prisoner incarcerated at California State Prison, Solano, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I. BACKGROUND

Petitioner was convicted by a jury of rape in the Alameda Superior Court of the State of California. On January 9, 2012, he was sentenced to 16 years in state prison; six years for the underlying offense and ten years due to a gang enhancement. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on February 11, 2014, denied review of a petition allegedly raising the same claims raised here.

II. DISCUSSION

A. Legal Standard

This court may entertain a petition for writ of habeas corpus “in behalf of a person
Case No. [15-cv-01003 NC](#)

1 in custody pursuant to the judgment of a State court only on the ground that he is in
2 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
3 § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause
4 why the writ should not be granted, unless it appears from the application that the applicant
5 or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is
6 appropriate only where the allegations in the petition are vague or conclusory, palpably
7 incredible, or patently frivolous or false. See *Hendricks v. Vasquez*, 908 F.2d 490, 491
8 (9th Cir. 1990).

9 **B. Petitioner’s Legal Claims**

10 Petitioner seeks federal habeas corpus relief by raising the following claims: that he
11 was denied his right to a fair trial by the misjoinder of defendants; that the evidence was
12 insufficient to sustain the true findings on the gang enhancements; that he was prejudiced
13 by the admission of prison gang evidence, by evidence of other gang “contacts,” and by
14 expert opinion evidence on his specific intent; and that his trial was rendered
15 fundamentally unfair by the cumulative effect of the errors at trial. Liberally construed,
16 the claims appear colorable under 28 U.S.C. § 2254 and merit an answer from respondent.

17 **III. CONCLUSION**

18 For the foregoing reasons and for good cause shown:

- 19 1. The clerk shall serve by certified mail a copy of this order and the
20 petition and all attachments thereto upon respondent. The clerk shall also
21 serve a copy of this order on petitioner.
- 22 2. Respondent shall file with the court and serve on petitioner, within 60
23 days of the date of this order, an answer showing why a writ of habeas
24 corpus should not be issued (or -an answer conforming in all respects to
25 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a
26 writ of habeas corpus should not be issued). Respondent shall file with
27 the answer and serve on petitioner a copy of all portions of the
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administrative record that are relevant to a determination of the issues presented by the petition.

3. If the petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within 30 days of his receipt of the answer.
4. Respondent shall file a consent or declination to magistrate judge jurisdiction within 14 days.

IT IS SO ORDERED.

Dated: October 28, 2015



NATHANAEL M. COUSINS
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACOB CHRISTIAN MULLAN,
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**CONSENT OR DECLINATION TO
MAGISTRATE JUDGE
JURISDICTION**

INSTRUCTIONS: Please indicate below by checking one of the two boxes whether you (if you are the party) or the party you represent (if you are an attorney in the case) choose(s) to consent or decline magistrate judge jurisdiction in this matter. Sign this form below your selection.

Consent to Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I voluntarily **consent** to have a United States magistrate judge conduct all further proceedings in this case, including trial and entry of final judgment. I understand that appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

OR

Decline Magistrate Judge Jurisdiction

In accordance with the provisions of 28 U.S.C. § 636(c), I **decline** to have a United States magistrate judge conduct all further proceedings in this case and I hereby request that this case be reassigned to a United States district judge.

DATE:

NAME:
COUNSEL FOR:
(OR "PRO SE:)

Signature