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

CURTIS LYNN COLLIER,

Petitioner,

No. CIV S-07-0761 LKK CHS P

vs.

JAMES TILTON, et al.,

Respondents.

ORDER

_____ /

Petitioner Curtis Lynn Collier, a state prisoner currently proceeding through appointed counsel, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On March 28, 2011, the magistrate judge’s findings and recommendations were filed and served on all parties. The magistrate judge recommended that the petition be granted in part and denied in part. In particular, it was recommended that the petition be granted solely as to petitioner’s claim that insufficient evidence supported his conviction on count III (a violation of California Health and Safety Code section 11366.5(a)). The findings and recommendations contained notice to all parties that any objections were to be filed within twenty-one days.

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1 Respondent's objections to the findings and recommendations are before the
2 court. In addition, petitioner, through counsel, has filed an unopposed motion to dismiss one of
3 the claims in the petition as moot. By motion filed on April 22, 2011, petitioner explains that
4 ground 14 of his petition (referred to in the findings and recommendations as claim C) has
5 become moot since he subsequently prevailed on this ground in a petition for writ of habeas
6 corpus to the Yuba County Superior Court, case number CRF01-723.

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-
8 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire
9 file, the court finds the findings and recommendations to be supported by the record and by
10 proper analysis, except to the extent it appears that ground 14 (claim C) has become moot since
11 the findings and recommendations were filed.

12 Accordingly, IT IS HEREBY ORDERED that:


- 13 1. Petitioner's April 22, 2011 motion to dismiss ground 14 (claim C) as moot is
14 GRANTED, and ground 14 in the third amended petition (claim C in the findings
15 and recommendations) alleging an error at sentencing is hereby dismissed as
16 moot;
- 17 2. Except for the dismissal as moot of ground 14 (claim C), the findings and
18 recommendations filed March 28, 2011 are adopted in full;
- 19 3. Petitioner's application for a writ of habeas corpus is GRANTED IN PART,
20 solely as to his claim that insufficient evidence supported his conviction on count
21 III (a violation of California Health and Safety Code section 11366.5(a)); AND
- 22 4. Respondent is ordered to release petitioner from custody to any extent he is held
23 on conviction of count III, a violation of California Health and Safety Code
24 section 11366.5(a), unless, within 60 days, the State of California elects to retry
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1 him on that count or to resentence him accordingly.¹

2 5. A certificate of appealability shall not issue in this case with respect to the claims
3 denied on the merits. *See* 28 U.S.C. § 2253.

4 IT IS SO ORDERED.

5 DATED: June 6, 2011.

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8 LAWRENCE K. KARLTON
9 SENIOR JUDGE
10 UNITED STATES DISTRICT COURT
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26 ¹ Because petitioner's sentence of 48 months on Count III was stayed by the trial court, it appears that the actual duration of his sentence will not be affected by this judgment.