

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

PAUL SAMUEL JOHNSON,

Petitioner,

No. 2:11-cv-3234 MCE GGH P

vs.

GARY SWARTHOUT,

Respondent.

ORDER and

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On February 9, 2012, respondent moved to dismiss the petition, on the sole ground that petitioner had failed to exhaust his remedies at the highest state court. See Doc. No. 13. On May 10, 2012, the undersigned filed findings and recommendations recommending that the court grant the respondent’s motion to dismiss because petitioner failed to establish that he had exhausted his remedies at the state Supreme Court. See Doc. No. 18. On May 24, 2012, petitioner filed a letter to the undersigned, asking the court to hold his current habeas petition in abeyance pending disposition of a Supreme Court petition that he filed on April 10, 2012. The court construes petitioner’s letter as a motion to stay the proceedings. So construed, the motion should be denied as moot, because the court’s independent review of the state Supreme Court’s

1 docket reflects that, on June 20, 2012, the state Supreme Court denied petitioner’s April 10, 2012
2 petition.¹ See, e.g., Biggs v. Terhune, 334 F.3d 910, 916 n.3 (9th Cir. 2003) (materials from
3 proceeding in another tribunal are appropriate for judicial notice); Lee v. City of Los Angeles,
4 250 F.3d 668, 689 (9th Cir. 2001) (court may take judicial notice of “matters of public record”).

5 The motion to dismiss (Doc. No. 13) should also be denied, as the sole basis for
6 relief was petitioner’s failure to exhaust, and it appears that petitioner has now exhausted his
7 available state court remedies.

8 Accordingly, IT IS HEREBY ORDERED that the findings and
9 recommendations filed May 10, 2012, are vacated.

10 IT IS HEREBY RECOMMENDED that

- 11 1. Petitioner’s request to stay these habeas proceedings (Doc. No. 19) be
12 denied as moot;
- 13 2. Respondent’s motion to dismiss (Doc. No. 13) be denied; and
- 14 3. Respondent be directed to file a response to the petition within 60 days if
15 these findings and recommendations are adopted.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
18 days after being served with these findings and recommendations, any party may file written
19 objections with the court and serve a copy on all parties. Such a document should be captioned
20 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
21 shall be served and filed within fourteen days after service of the objections. The parties are

22 \\\

23 \\\

24 \\\

25
26 ¹ The court reviewed the case information for petitioner’s habeas petition at the California Courts’ website, located at <http://www.courts.ca.gov/supremecourt.htm>.

1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: August 1, 2012

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

GGH:rb
john3234.fr