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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT R. BORYS,
Petitioner,
v.
DANIEL PARAMO,
Respondent.

No. 2:15-cv-1942 WBS AC P

FINDINGS & RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se pursuant to 28 U.S.C. § 2254, seeks a stay to permit exhaustion of his unexhausted claims. Petitioner is serving a sixty-five year sentence following his 2010 conviction in the El Dorado County Superior Court on twenty-six separate counts. ECF No. 1 at 1. Petitioner challenges his conviction and sentence on two grounds, both of which he states have been exhausted in state court. Id. at 5-8.

Petitioner has now filed two motions for stay and abeyance in which he specifically requests a stay pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), so that he can exhaust additional claims in state court.¹ ECF Nos. 7, 8. A stay pursuant to Kelly stays only a fully exhausted petition, does not require a showing of good cause, and does not guarantee the timeliness of claims that are exhausted in the future and then presented to this court. King v.

¹ In his second motion, petitioner states that he filed a petition in the California Supreme Court on November 5, 2015, and was assigned case number S230422. ECF No. 8 at 2. According to the California Supreme Court’s case information website, the petition is still pending.

1 Ryan, 564 F.3d 1133, 1140-41 (9th Cir. 2009). Petitioner states that the petition in this case is
2 fully exhausted. ECF No. 1 at 5-8. In recommending petitioner's request for a stay be granted,
3 the court takes no opinion as to whether petitioner's currently unexhausted claims will be timely
4 once exhausted and brought in this court.

5 Accordingly, IT IS HEREBY RECOMMENDED that:

6 1. Petitioner's motions for stay and abeyance (ECF Nos. 7, 8) be granted.

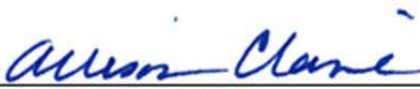
7 2. Upon receiving the ruling of the California Supreme Court exhausting petitioner's as-
8 yet unexhausted grounds, petitioner be required, within thirty days thereafter:

9 a. To inform this court of any such ruling and to request the stay be lifted; and

10 b. To file an amended federal petition containing all of his exhausted claims.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
13 after being served with these findings and recommendations, petitioner may file written
14 objections with the court. Such a document should be captioned "Objections to Magistrate
15 Judge's Findings and Recommendations." Petitioner is advised that failure to file objections
16 within the specified time may waive the right to appeal the District Court's order. Martinez v.
17 Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: December 14, 2015

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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