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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICIA ANNE ORDWAY,
Petitioner,
v.
MILLER, Warden,
Respondent.

1:11-cv-00616 MJS HC

ORDER DENYING WITHOUT
PREJUDICE PETITIONER'S MOTION
REQUESTING EVIDENTIARY HEARING
AND DISCOVERY

ORDER DENYING PETITIONER'S
MOTION TO STAY WITHOUT
PREJUDICE

[Docs. 4-5]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the present petition on April 21, 2011. Concurrently with the petition, Petitioner filed a motion to request an evidentiary hearing and production of discovery and a motion for stay and abeyance of the petition.

With regard to Petitioner's motion for evidentiary hearing and discovery, Petitioner's request for discovery is denied without prejudice. By way of separate order, the Court directed Respondent to file a response to the Petition. Under Rule 5 of the Rules Governing Section

1 2254 Cases, Respondent is required to indicate what transcripts are available, and attach to
2 the response all relevant transcripts and copies of briefs and opinions of any post conviction
3 proceedings initiated by Petitioner. See Rule 5(c)-(d). Petitioner shall be served with copies
4 of the records filed with the response, and provided time to review the relevant documents.
5 Should the records provided by Respondent not be adequate to address the issues presented
6 in the response, Petitioner may file a renewed motion for discovery at that time. Therefore,
7 Petitioner's motion requesting discovery and an evidentiary hearing is DENIED without
8 prejudice. (ECF No. 4.)

9 Petitioner's motion to stay the petition also is denied without prejudice. Petitioner has
10 not provided the Court with sufficient documentation to determine whether Petitioner has
11 presented the Court with a mixed petition that requires Petitioner to further exhaust her
12 remedies in the state court nor provided any other basis for staying this action. Again, after
13 receiving Respondent's response and attached exhibits, Petitioner may move to stay the
14 proceeding if appropriate. Therefore, Petitioner's motion to stay the proceeding is DENIED
15 without prejudice. (ECF No. 5.)

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17 IT IS SO ORDERED.

18 Dated: October 30, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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