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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWIGHT TAMPLIN, JR.,
Petitioner,

v.

WILLIAM MUNIZ,
Respondent.

No. 1:12-cv-01633-AWI-SKO (HC)

**FINDINGS AND RECOMMENDATION
TO DENY MOTION FOR ORDER
DISMISSING STATE COURT ACTION
WITH PREJUDICE, OR IN THE
ALTERNATIVE, SCHEDULE AN
EVIDENTIARY HEARING**

[Docs. 84, 85]

**[TWENTY-ONE DAY OBJECTION
DEADLINE]**

Petitioner filed a habeas petition on October 4, 2012, challenging his 2007 conviction in Fresno County Superior Court of possession of a firearm by a felon. On October 5, 2018, the Court issued an order granting the petition with instructions that Petitioner be released from custody within ninety days unless he was arraigned and a new trial date set.

Pending before the Court are Petitioner’s two motions to dismiss the state court action, filed on December 23 and 27, 2019, respectively. (Docs. 84, 85.) Petitioner contends that the state court has failed to abide by the Court’s instructions and requests dismissal of all charges, or in the alternative, that the Court schedule an evidentiary hearing on his complaints. The Court finds that the state court has complied with the Court’s order of October 5, 2018. As to Petitioner’s complaints concerning violations of his rights in the state court hearing, the Court

1 finds that it must abstain from interfering in ongoing state court proceedings, insofar as Petitioner
2 has avenues of relief available to him in the state courts.

3 **DISCUSSION**

4 Under principles of comity and federalism, a federal court should not interfere with
5 ongoing state criminal proceedings by granting injunctive or declaratory relief except under
6 special circumstances. Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention is
7 required when: (1) state proceedings, judicial in nature, are pending; (2) the state proceedings
8 involve important state interests; and (3) the state proceedings afford adequate opportunity to
9 raise the constitutional issue. Middlesex County Ethics Comm. V. Garden State Bar Ass'n, 457
10 U.S. 423, 432 (1982); Dubinka v. Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994).
11 The rationale of Younger applies throughout the appellate proceedings, requiring that state
12 appellate review of a state court judgment be exhausted before federal court intervention is
13 permitted. Dubinka, 23 F.3d at 223 (even if criminal trials were completed at time of abstention
14 decision, state court proceedings still considered pending).

15 The law of habeas corpus also provides guidance on when a district court should abstain
16 from review of a claim. To be granted federal habeas corpus relief, the petition must have
17 exhausted his available state remedies. 28 U.S.C. § 2254(b). The rule of exhaustion is based on
18 comity to the state court and gives the state court the initial opportunity to correct the state's
19 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991). The
20 exhaustion requirement can be satisfied by providing the highest state court with a full and fair
21 opportunity to consider each claim before presenting it to the federal court. Picard v. Connor, 404
22 U.S. 270, 276 (1971).

23 As previously stated, the District Court issued the order granting the petition on October
24 5, 2018. (Doc. 82.) The Court's order instructed Respondent to release Petitioner unless he was
25 arraigned and a new trial date was set within ninety days. Petitioner has submitted a copy of a
26 minute order from the Fresno County Superior Court reflecting that Petitioner was re-arraigned
27 on the charges on December 17, 2018, and a new trial date was set for January 31, 2019. (Doc.
28 85 at 6-7.) Thus, the Court's order was satisfied.

