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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY LAWS,  
Petitioner,  
v.  
GARY SWARTHOUT,  
Respondent.

1:13-cv-01547-JLT (HC)  
ORDER GRANTING PETITIONER'S  
FIFTH MOTION FOR EXTENSION OF  
TIME TO FILE TRAVERSE  
(Doc. 30)  
30-DAY DEADLINE

Petitioner is a state prisoner proceeding pro se in a habeas corpus action pursuant to 28 U.S.C. § 2254. On July 9, 2014, Petitioner filed a motion to extend time to file Traverse, contending that his former attorney mailed the court transcripts to his prior prison and that he has been unable to obtain them in order to prepare his Traverse.

Petitioner alternatively has requested dismissal of his petition without prejudice in order to locate his state court records. Petitioner is advised that, while the Court is authorized to grant a dismissal without prejudice, the dismissal would likely render untimely any new petition he might file because the one-year limitation period on filing federal petitions is not tolled during the pendency of a federal petition. Since this petition has been pending for almost one year, it seems unlikely that Petitioner could timely file a new petition, even if the transcripts he needs were immediately obtained. However, ultimately, Petitioner is the one to make that decision, not this Court.

1 In order to give Petitioner the opportunity to make a considered decision about dismissal  
2 versus proceeding without the court transcripts, the Court will grant the one further extension of  
3 time. The arguments discussed in the Answer are limited to whether appellate counsel was  
4 ineffective, and, thus, raise strictly legal issues that do not appear to rely expressly on evidence  
5 and testimony from the trial. Moreover, the Court has a copy of the transcripts and can review  
6 the transcripts as part of its regular habeas review. Petitioner should therefore carefully consider  
7 whether he actually needs the transcripts in order to prepare a Traverse. Good cause appearing,  
8 the Court **ORDERS:**

9 Petitioner is granted 30-days from the date of service of this order in which to file  
10 Traverse.

11 IT IS SO ORDERED.

12  
13 Dated: July 30, 2014

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE