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

**ERNEST EDWARD SMITH,**  
Petitioner,  
  
v.  
  
**JOHN N. KATAVICH, Warden,**  
Respondent.

1:15-cv-00565 DAD MJS HC

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATION TO DENY MOTION  
TO DISMISS WITHOUT PREJUDICE AND  
TO GRANT MOTION TO STAY PETITION  
FOR WRIT OF HABEAS CORPUS**

**(Doc. 13)**

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

On April 13, 2015, petitioner filed the instant petition for writ of habeas corpus in this court raising five claims for relief. On May 12, 2015, respondent filed a motion to dismiss based on petitioner’s alleged failure to exhaust all of the claims presented in the petition by first presenting them to the state high court. (Mot. To Dismiss, Doc. No. 9.) Petitioner did not file an opposition to that motion. On June 18, 2015, the assigned magistrate judge issued findings and recommendations recommending that the motion to dismiss be granted and the petition be dismissed unless petitioner elected to proceed only with respect to claim one, the only exhausted claim in the instant petition.

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1 On June 24, 2015, petitioner moved to stay the pending petition while he sought to  
2 exhaust his claims two through five in state court. (Doc. No. 12). On September 24, 2015, the  
3 assigned magistrate judge issued an order withdrawing the findings and recommendations  
4 recommending dismissal of the petition, and issued new findings and recommendations  
5 recommending that the motion to dismiss be denied without prejudice and that petitioner's motion  
6 to stay the petition for writ of habeas corpus pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir.  
7 2002) and *King v. Ryan*, 564 F.3d 1133 (9th Cir. 2009) be granted. (Doc. No. 13.)

8 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a  
9 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the  
10 magistrate judge's findings and recommendation is supported by the record and proper analysis.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The Findings and Recommendations issued on September 24, 2015, are ADOPTED  
13 IN FULL;

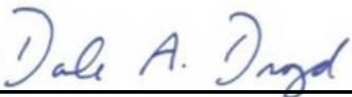
14 2. Petitioner's motion for stay (Doc. No. 12) be granted pursuant to the decisions in  
15 *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002) and *King v. Ryan*, 564 F.3d 1133 (9th Cir. 2009),  
16 and the instant action be administratively stayed;

17 3. Petitioner is directed to file a motion to lift the stay within 30 days of the California  
18 Supreme Court issuing a final order resolving petitioner's unexhausted claims; and

19 Petitioner is forewarned that failure to comply with this Order may result the dismissal of  
20 the petition. *See* Local Rule 110.

21 IT IS SO ORDERED.

22 Dated: February 1, 2016

23   
UNITED STATES DISTRICT JUDGE