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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TANNEN SOOJIAN,
Petitioner,
v.
JOE A. LIZARRAGA,
Respondent.

Case No. 1:16-cv-00254-AWI-SAB-HC
ORDER ADOPTING FINDINGS AND
RECOMMENDATION
(ECF No. 40)

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

On March 21, 2017, the Magistrate Judge issued Findings and Recommendation that recommended denying Petitioner’s motion to stay. (ECF No. 40). This Findings and Recommendation was served on Petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order. On April 20, 2017, Petitioner filed timely objections to the Findings and Recommendation. (ECF No. 41).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of the matter. Having carefully reviewed the entire file, including Petitioner’s objections, the Court concludes that the Findings and Recommendation is supported by the

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1 record and proper analysis.¹ Petitioner has failed to demonstrate good cause for his failure to
2 exhaust the unexhausted claims. The Court agrees with the Magistrate Judge's conclusion that
3 the alleged ineffective assistance of post-conviction counsel in failing to review the complete
4 lower court record is divorced from the non-exhaustion of claims 7 and 9 regarding prosecutorial
5 misconduct and cumulative error, respectively. The Court further agrees with the Magistrate
6 Judge's conclusion that appellate counsel was not ineffective in failing to bring the meritless
7 prosecutorial misconduct claim. A Rhines stay is not warranted.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The March 21, 2017 Findings and Recommendation (ECF No. 40) is ADOPTED;
- 10 2. Petitioner's motion to stay (ECF No. 36) is DENIED;
- 11 3. Petitioner is allowed to proceed with the exhausted claims of the petition;
- 12 4. Petitioner may file a traverse within THIRTY (30) days from the date of this order;
- 13 and
- 14 5. This matter is referred back to the Magistrate Judge for further proceedings.

15 IT IS SO ORDERED.

16 Dated: June 7, 2017

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19 SENIOR DISTRICT JUDGE

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28 ¹ Although the Magistrate Judge erroneously identified the crimes of conviction, that error has no impact on the analysis regarding the propriety of staying the action to permit Petitioner to exhaust his unexhausted claims.