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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GERALD H. STOLP,) Case No.: 1:16-cv-00560-JLT
)
Petitioner,) INFORMATIONAL ORDER
)
v.)
)
KIM HOLLAND,)
)
Respondent.)
)

In this action, Petitioner raises the following claims: (1) violation of Petitioner’s right to a speedy trial; (2) ineffective assistance of appellate counsel; (3) violation of statute of limitations; and (4) violation of Interstate Agreement on Detainers Act. (Doc. 1) Petitioner readily acknowledges that only ground one is exhausted and filed a motion to stay the proceedings in this case while he exhausts grounds three and four in state court. (Doc. 3) In his petition, Petitioner indicated that he believed, erroneously, that ground two need not be exhausted because it arose during the course of his direct appeal. On April 25, 2016, the Court issued an order granting a stay, requiring Petitioner to file regular status reports, and indicating to Petitioner that an issue is not exhausted merely because it arose during his direct appeal. (Doc. 10)

Since that time, Petitioner has filed two status reports, both indicating that he has been unable to pursue exhaustion at the intermediate appellate level because of being placed in administrative segregation, because of being limited in his access to the prison law library, and again requesting legal

1 advice regarding whether ground two is exhausted.

2 **DISCUSSION**

3 As mentioned in the order granting a stay, it is Petitioner’s obligation to diligently pursue
4 exhaustion in state court. Absent diligent efforts, as explained to the Court in regular status reports,
5 the Court will routinely lift a stay and allow the proceedings to continue, regardless of whether
6 Petitioner has successfully exhausted additional issues.

7 Here, Petitioner has repeatedly asked this Court to advise him whether his ground two is
8 exhausted, initially because the issue arose during the direct appeal and later because it was
9 “indirectly” raised in his state petition.

10 Petitioner is advised that the Court is the deciding tribunal in these proceedings. As such, it
11 does not provide legal advice to either side in a case. Accordingly, the Court cannot and will not
12 provide Petitioner with an advisory opinion on whether ground two has been exhausted. As it would
13 with any petitioner, ***the Court admonishes Petitioner to attempt to exhaust issues he believes may be***
14 ***unexhausted, and to proceed on those he believes are already fully exhausted.***

15 Also by way of admonishment, the Court notes that many petitioners find themselves in
16 administrative segregation or other restrictive custodial environments, e.g., transfers to different
17 facilities, prison lockdowns, etc., where an inmate’s legal papers may be temporarily misplaced or
18 otherwise unavailable. It is a normal, albeit unfortunate, part of prison life that access to the prison
19 law library may be limited or even eliminated for periods of time. Those are not “extraordinary
20 circumstances” that excuse diligence in pursuing exhaustion, and they do not relieve Petitioner from
21 his obligation of exerting his best efforts to exhaust his state remedies pursuant to the Court’s April 25,
22 2016 order granting the stay.

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