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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY EUGENE BISEL,
Petitioner,

v.

RAY FISHER, JR., et al.,
Respondents.

Case No.: 1:17-cv-00013-DAD-SKO (HC)

ORDER DENYING MOTION TO INCLUDE
LATE DISCOVERY
[Doc. 77]

FINDINGS AND RECOMMENDATION TO
DENY MOTION FOR TEMPORARY
RESTRAINING ORDER AND STAY OF
PAROLE CONDITIONS
[Doc. 76]

[21-DAY DEADLINE]

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

On October 4, 2021, Respondent filed an answer to the first amended petition. (Doc. 65.) On February 28, 2022, Petitioner filed a traverse to the answer. (Doc. 72.) On April 29, 2022, Petitioner filed a motion for a temporary restraining order. (Doc. 76.) On May 23, 2022, Petitioner filed a motion for leave to include late discovery. (Doc. 77.) For the reasons set forth below, the Court will deny the motion for late discovery and recommend that the motion for temporary restraining order be denied.

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1 **DISCUSSION**

2 I. Motion to Include Discovery

3 Petitioner moves to include “new evidence . . . of outright theft of Petitioner’s funds by
4 jail officers, who apparently stole his debit card from jail’s property room, and used it to pilfer
5 \$872.00 from 10-19-12 through 10-31-12, by making 4 withdrawals from same ATM machine on
6 the Fulton Mall.” (Doc. 77 at 1.) According to the exhibits Petitioner has submitted, it appears
7 Petitioner was the victim of credit card fraud. The Fraud Services Department of Direct Express,
8 a credit card company, determined that \$872.00 was fraudulently withdrawn from Petitioner’s
9 account, and thereafter restored that amount to Petitioner’s account. However, there is no
10 foundation for Petitioner’s claim that jail officers were responsible for the fraud. In any case, the
11 evidence is irrelevant to any of Petitioner’s claims as it has no bearing on Petitioner’s 2014
12 convictions. Therefore, the motion will be denied.

13 II. Motion for Restraining Order

14 On April 29, 2022, Petitioner filed a motion entitled, “Emergency Motion for Order of
15 Protection for Witness Alex G.; Stay of Probation and/or Parole; Motion to Allow New Exhibits
16 Re: Trial Judge Petrucelli.” (Doc. 76.) Petitioner first alleges that “[i]t appears highly likely Alex
17 G. (the victim in this case), and his family are in danger of threats, harassment, jailing, or worse,
18 by the full law enforcement element of the Fresno County Court system.” (Doc. 76 at 2.)
19 Petitioner’s allegation is completely baseless. He submits nothing in support of this unfounded
20 allegation. It is also outside this Court’s jurisdiction to issue such an order.

21 Petitioner mentions certain “restrictive, worsening and ever-changing ‘special
22 conditions’” for parole, and he claims the victim may “not provide Petitioner or this Court with
23 evidence he was improperly induced to maintain his fabricated testimony during Petitioner’s
24 trial.” (Doc. 76.) If Petitioner is seeking this Court’s aid to bypass certain special conditions and
25 restrictions of his parole, so as to allow him contact with the victim, Petitioner is gravely
26 mistaken. Such a request should and will be rejected. The allegation also concerns the conditions
27 of Petitioner’s confinement and is not properly brought in a habeas proceeding.
28

1 Petitioner further “requests immediate relief in the form of stay from all forms of state
2 probation and/or parole, until such time as the petition is resolved” (Doc. 76 at 5.) Federal
3 courts reserve bail pending resolution of a habeas corpus petition to "extraordinary cases
4 involving special circumstances" and where there is a high probability of the petitioner's success
5 on the merits. United States v. Mett, 41 F.3d 1281, 1282 (9th Cir. 1994) (quoting Land v. Deeds,
6 878 F.2d 318, 318-319 (9th Cir. 1989)). A petitioner must also show circumstances that make
7 him exceptional and especially deserving of special treatment in the interests of justice. Benson
8 v. California, 328 F.2d 159, 162 (9th Cir. 1964). The Court must consider the petitioner’s risk of
9 flight and the danger to the community should the petitioner be released. Marino v. Vasquez, 812
10 F.2d 499, 508-09 (9th Cir. 1987). None of these requirements have been met in the case before
11 the Court. First, the likelihood of success on the merits is low. Second, Petitioner has shown no
12 circumstances which would make him exceptional or especially deserving of special treatment.
13 Third, his risk of danger to the community is demonstrated herein by his request to avoid the
14 special conditions and restrictions of parole in order to, among other things, contact the victim.

15 In his motion, Petitioner also requests leave to include newly discovered evidence of the
16 trial judge’s serious reprimand proceedings. None of the allegations of misconduct presented
17 concern Petitioner’s trial; therefore, the material is irrelevant to these proceedings. The request
18 will be denied.

19 ORDER

20 Based on the foregoing, IT IS HEREBY ORDERED that the motions for late discovery
21 (Doc. 77) and leave to include additional exhibits (Doc. 76) are DENIED.

22 RECOMMENDATION

23 The Court RECOMMENDS that the motions for restraining order and for stay of all
24 parole restrictions be DENIED.

25 This Findings and Recommendation is submitted to the United States District Court Judge
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
27 Local Rules of Practice for the United States District Court, Eastern District of California. Within
28 twenty-one (21) days after being served with a copy of this Findings and Recommendation, any

1 party may file written objections with the Court and serve a copy on all parties. Such a document
2 should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies
3 to the Objections shall be served and filed within ten (10) court days (plus three days if served by
4 mail) after service of the Objections. The Court will then review the Magistrate Judge's ruling
5 pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
6 objections within the specified time may waive the right to appeal the Order of the District Court.
7 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

Dated: May 25, 2022

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE