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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANGELIQUE NASH,
Petitioner,
v.
D. G. ADAMS,
Respondent.

No. 1:17-cv-00238-AWI-JLT (HC)
**ORDER GRANTING RESPONDENT’S
REQUEST TO WITHDRAW MOTION TO
DISMISS [Docs. 16, 18]**
**ORDER VACATING FINDINGS AND
RECOMMENDATION [Doc. 17]**
**ORDER DIRECTING RESPONDENT TO
FILE ANSWER TO FIRST AMENDED
PETITION**
[SIXTY DAY DEADLINE]

Petitioner filed a habeas petition on February 17, 2017, challenging her 2013 conviction in Kern County Superior Court of first degree murder with special circumstances. On May 5, 2017, she filed a First Amended Petition. (Doc. 10.) On July 6, 2017, Respondent filed a motion to dismiss the petition as premature. (Doc. 16.) Petitioner did not file an opposition. On September 8, 2017, the Court issued Findings and Recommendation to grant Respondent’s motion to dismiss and to dismiss the petition as premature.

On September 13, 2017, Respondent filed a request to withdraw the motion to dismiss. Respondent states that the information presented was incorrect. Petitioner notified Respondent that state review was pending in her sister’s case (Katila Jean Nash), rather than Petitioner’s.

1 Respondent submits that Petitioner is correct. Respondent states that the joint trial of Petitioner,
2 her sister, and another codefendant, along with separate numberings and various consolidations,
3 appear to have led Respondent to file a dismissal motion with inaccurate information. Good
4 cause appearing therefor, the Court GRANTS Respondent's motion to withdraw the motion to
5 dismiss. Consequently, the Court will VACATE the Findings and Recommendations and
6 DIRECT Respondent to file a response to the First Amended Petition.

7 **ORDER**

8 Accordingly, the Court **ORDERS**:

- 9 1) Respondent's request to withdraw his Motion to Dismiss is **GRANTED**;
10 2) The Findings and Recommendation issued September 8, 2017, is **VACATED**;
11 3) The Motion to Dismiss filed on July 6, 2017, is **TERMINATED**;
12 4) Respondent is directed to file an Response to the first Amended Petition **within 60**
13 **days** of the date of service of this Order in accordance with the Court's Order Setting
14 Briefing Schedule of May 9, 2017 (Doc. 11.); and
15 5) The parties are directed to the Order of May 9, 2017, for the briefing schedule.

16
17 IT IS SO ORDERED.

18 Dated: September 14, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE