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

JOSEPH SHERMAN,

Petitioner,

No. CIV S-06-0016 GEB DAD P

vs.

YOLO COUNTY SHERIFF, et al.,

Respondents.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a judgment of conviction entered against him on March 20, 2004, in the Yolo County Municipal Court on charges of misdemeanor intentional interference with business at both the public library and at an Albertson’s grocery store in Davis, California. He seeks relief on the following grounds: (1) the evidence was insufficient to support his convictions; (2) the trial court violated his Sixth Amendment right to a speedy trial; (3) the trial court improperly failed to give certain jury instructions requested by petitioner; (4) he was subjected to unreasonable search and seizure, in violation of the Fourth Amendment; (5) the trial court improperly excluded evidence, including evidence that he was subjected to “invidious discrimination” and vindictive prosecution; and (6) his rights to a fair trial, an impartial jury, and to due process and equal protection in sentencing

1 and appeal were violated. In their response to petitioner’s habeas petition, respondents argue that
2 the petition is virtually identical to another habeas petition pending in this court. Respondents
3 “submit[] the instant action should be transferred, stayed, or the Court should take other action it
4 deems appropriate because Petitioner already has a similar action pending in the United States
5 District Court for the Eastern District of California.” (September 14, 2006 “Response to Court’s
6 Order,” at 2.)

7 The record reflects that on January 4, 2006, the same date the instant petition was
8 filed, petitioner filed a habeas petition in case No. CIV S-06-0018, FCD CHS P. In that
9 proceeding, petitioner challenged his September 3, 2005 conviction in Yolo County Municipal
10 Court on one count of misdemeanor intentional interference with business at Long’s Drugs in
11 Davis, California. Although some of the claims asserted in CIV S-06-0018 FCD CHS P are
12 identical to claims raised in the instant petition, the underlying convictions and the facts
13 pertaining to those convictions are different in each case. Further, petitioner application for a
14 writ of habeas corpus was denied in case No. CIV S-06-0018 FCD CHS P and that case was
15 closed on December 3, 2008. Under these circumstances, this court declines to transfer, stay, or
16 relate the instant petition with case No. CIV S-06-0018 FCD CHS P.

17 Accordingly, IT IS HEREBY ORDERED that:

18 2. Respondents are directed to file a response to the merits of petitioner’s habeas
19 petition within sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254
20 Cases. An answer shall be accompanied by all transcripts and other documents relevant to the
21 issues presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

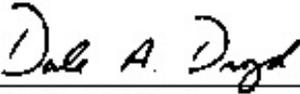
22 3. If the response to the habeas petition is an answer, petitioner’s reply, if any,
23 shall be filed and served within thirty days after service of the answer;

24 4. If the response to the habeas petition is a motion, petitioner’s opposition or
25 statement of non-opposition to the motion shall be filed and served within thirty days after

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1 service of the motion, and respondents' reply, if any, shall be filed and served within fifteen days
2 thereafter.

3 DATED: July 29, 2009.

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6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

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