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

ROBERT HAYDEN NESBITT, JR.,

Petitioner,

No. CIV S-09-2821 GEB GGH P

vs.

FRANCISCO JACQUEZ, Warden,

Respondent.

ORDER

_____/

On January 28, 2011, the undersigned set the briefing schedule and denied petitioner’s motion for discovery and denied petitioner leave to amend his petition to add a claim of ineffective assistance of counsel. On February 8, 2011, petitioner filed a request for reconsideration to the district judge of the two rulings; by Order, filed on March 16, 2011, the Jan. 28, 2011, Order was affirmed. By Order, filed on May 10, 2011,¹ petitioner’s motion for the court to certify the March 16, 2011 Order for interlocutory review was denied as well as was “petitioner’s motion for a stay pending state court exhaustion of an ineffective assistance of counsel claim,” noting that leave to proceed upon such a claim had been previously denied.

Nevertheless, petitioner filed a motion stay pending exhaustion of an ineffective

¹ The Findings and Recommendations, filed on April 6, 2011, were adopted therein.

1 assistance of counsel claim, on May 23, 2011. Docket # 45. Although not properly noticed for
 2 hearing in the court docket, the motion indicates a July 21, 2011, hearing date. Id. Within the
 3 motion, petitioner recognizes that the court has denied such a stay but states that the motion is
 4 being filed to complete the record, present all arguments and preserve the matter for appeal.
 5 Petitioner avers that there was no motion to stay before the court when the denial was issued and
 6 speculates that the denial was based on petitioner's argument in favor of the discovery then
 7 sought, which was denied. However, petitioner recognizes that any request for a stay (implicit
 8 or explicit) has been denied.

9 Respondent has now filed an opposition, presumably to preserve respondent's
 10 arguments for the purpose of appeal. It may be that petitioner will be filing a reply. In any case,
 11 however, this order is issued for the purpose of clarification.

12 Accordingly, IT IS ORDERED that:

13 1. Petitioner's request for a stay pending state court exhaustion of a claim of
 14 ineffective assistance of counsel, filed docket # 45, has been previously addressed and
 15 adjudicated, see docket entries # 34, # 39, # 41, and # 43; and

16 2. The hearing date for the motion for a stay, purportedly noticed for hearing
 17 before the undersigned on July 21, 2011, is hereby VACATED.

18 DATED: June 15, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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