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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MACK A. WEST, JR.,
Petitioner,
v.
KATHLEEN DICKINSON, Warden,
Respondents.

No. 2:09-cv-3147 KJM AC P

ORDER

Petitioner is a state prisoner proceeding pro se and in forma pauperis on his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Currently pending before the court is petitioner’s motion for leave to file a fourth amended § 2254 petition along with the proposed amended petition. ECF Nos. 116, 117. Respondent has filed an opposition, ECF No. 121, and petitioner has filed a reply, ECF No. 123.

Based on the renewal of petitioner’s request for the appointment of counsel “to develop the facts of his claims of equitable tolling,” and in light of the complexity of the legal issues involved, as well as the length of petitioner’s sentence, the court has determined that the interests of justice require appointment of counsel. See ECF No. 123 at 5; see also 18 U.S.C. § 3006A(a)(2)(B); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983).

Accordingly, IT IS HEREBY ORDERED that:

1. The Federal Defender is appointed to represent petitioner.
2. The Clerk of the Court is directed to serve a copy of the petition and this order

1 on David Porter, Assistant Federal Defender.

2 3. Petitioner's counsel shall contact the Clerk's Office to make arrangements for
3 copies of documents in the file.

4 4. Petitioner's counsel is ordered to file a supplemental motion for leave to file a fourth
5 amended § 2254 petition on or before January 17, 2014 addressing the timeliness of the newly
6 exhausted ineffective assistance of appellate counsel claims including: 1) whether the claims
7 relate back to earlier timely petitions filed by petitioner; and, 2) whether equitable tolling of the
8 federal statute of limitations based on petitioner's alleged mental incompetence, serious mental
9 illness, or developmental impairment in combination with his lack of access to his legal files
10 renders the claims timely filed. With respect to the issue of equitable tolling, counsel for
11 petitioner is ordered to further supplement the record with copies of petitioner's mental health
12 treatment records during the relevant time period of February 19, 2009 until September 25, 2013
13 as the records submitted to date are episodic. See e.g., ECF No. 116 at 216-217 (mental health
14 records from January 5-January 22, 2010); ECF No. 116 at 231 (mental health assessment dated
15 January 12, 2012); ECF No. 116 at 233-234 (affidavit of Mr. Barajas documenting petitioner's
16 suicidal ideation on January 19, 2013); ECF No. 116 at 236 (medical report of injury of petitioner
17 on December 6, 2012).

18 5. Petitioner's counsel is further granted leave to file a traverse following resolution of
19 petitioner's motion to amend his § 2254 petition and the filing of any supplemental answer by
20 respondent that may be necessitated by adjudication of the motion. A further briefing schedule
21 will be set upon resolution of the motion to amend.

22 DATED: November 18, 2013

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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