

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

DEANDRE CERRONE SCOTT,

Petitioner,

No. CIV S-10-2492 WBS GGH F

VS.

MIKE McDONALD,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Therein, petitioner challenges his 2008 conviction for first degree murder on two grounds: 1) trial court error abuse of discretion when jury was given a supplemental “firecracker” instruction after court became aware the jury was deadlocked with a hold-out juror, resulting in a coerced verdict; petitioner appears to combine that claim with one for ineffective assistance of counsel to the extent the issue may be deemed waived by his counsel’s actions/omissions; 2) trial court error in giving flight instruction where there was no substantial evidence of flight immediately after commission of crime, or the accusation of a crime having been committed. Petition, pp. 1, 7, 28-53. Pursuant to the order, filed on 10/08/10, respondent filed an answer on 12/06/10. On 1/19/11, petitioner filed a motion for a stay.

1 Petitioner, instead of filing a traverse/reply, now seeks a stay based on his having
2 filed, in October of 2010, a habeas corpus petition in the state superior court seeking to exhaust
3 five additional claims, which the court will number as 3 through 7; claim 3: insufficient evidence
4 to support conviction/actual innocence; claim 4: prosecutorial misconduct; claim 5: ineffective
5 assistance of trial and appellate counsel; claim 6: prosecution failed to prove every element
6 (intent, malice aforethought, premeditation) to prove first degree murder; claim 7: prejudice by
7 trial court abuse of discretion in permitting jury to hear misstated evidence by prosecution
8 without sua sponte admonition. Motion, pp. 1-2.

9 Before the court considers the motion, the undersigned will require a response
10 from respondent.

11 Accordingly, IT IS HEREBY ORDERED that respondent submit a response to
12 petitioner's motion for a stay, pending exhaustion of additional claims in state court, within
13 twenty-eight days.

14 DATED: February 3, 2011

15 /s/ Gregory G. Hollows

16 UNITED STATES MAGISTRATE JUDGE

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