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

10 DEANDRE CERRONE SCOTT,

11 Petitioner,

No. CIV S-10-2492 WBS GGH P

12 vs.

13 MIKE McDONALD,

14 Respondent.

ORDER

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

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

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

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

DATED: February 3, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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