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

SHAWN CONLEY,

Petitioner,

No. CIV S-11-0126 LKK DAD P

vs.

L.S. McEWEN,

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.

On October 11, 2011, the court issued findings and recommendations recommending that this action be dismissed due to petitioner’s failure to exhaust his claims in state court. (Doc. No. 7.) Specifically, the court noted that petitioner alleged that he had presented one of his claims to the Sacramento County Superior Court and the second claim to the California Court of Appeal, but failed to allege that he had presented either claim to the California Supreme Court. (Id.) On November 7, 2011, petitioner filed objections to those findings and recommendations, asserting that he has, in fact, exhausted his claims to habeas relief by presenting them to the California Supreme Court. (Doc. No. 9.) Petitioner has also included with his objections a copy of the California Supreme Court’s decision denying his

1 habeas petition with a citation to People v. Duval, 9 Cal. 4th 464, 474 (1995). Although
2 petitioner has not submitted a copy of the habeas petition he filed with the California Supreme
3 Court, the court will nonetheless vacate the findings and recommendations recommending
4 dismissal.

5 Since petitioner may be entitled to relief if the claimed violation of constitutional
6 rights is proved, respondent will be directed to file a response to petitioner's habeas petition.

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. The findings and recommendations, filed on October 11, 2011, are vacated;

9 2. Respondent is directed to file a response to petitioner's habeas petition within
10 sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer
11 shall be accompanied by all transcripts and other documents relevant to the issues presented in
12 the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

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

15 4. If the response to the habeas petition is a motion, petitioner's opposition or
16 statement of non-opposition to the motion shall be filed and served within thirty days after
17 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days
18 thereafter; and

19 5. The Clerk of the Court shall serve a copy of this order together with a copy of
20 the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on Michael Patrick Farrell,
21 Senior Assistant Attorney General.

22 DATED: November 21, 2011.

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25 _____
26 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:4

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