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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD DEWAYNE BASSETT,
Petitioner,
v.
MIKE McDONALD, Warden, et al.,
Respondents.

No. 2:11-cv-1592 TLN AC P

ORDER

Petitioner is a California state prisoner proceeding pro se pursuant to 28 U.S.C. § 2254. Before the court is a “motion to amend” filed on September 9, 2013. ECF No. 41. As the following procedural history illustrates, what petitioner actually seeks is to proceed on his initial petition.

This case was initiated by habeas petition filed on June 13, 2011. ECF No. 1. Petitioner challenges his conviction following a no contest plea to second degree robbery, forcible rape, and kidnapping. Petitioner admitted use of a firearm, and was sentenced in 2009 to a term of forty years and four months. Petition, p. 1; Answer, p. 8. Petitioner listed the grounds of his petition as (1) preliminary hearing issues; (2) plea bargain issue; and (3) ineffective assistance of counsel. Petition, pp. 6-14. An answer was filed on July 28, 2011.

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1 Agreeing with respondent that not all his claims were exhausted, petitioner moved for a
2 stay. On November 14, 2011, the case was stayed pursuant to King v. Ryan, 564 F.3d 1133 (9th
3 Cir. 2009), pending exhaustion of the unexhausted claims. ECF No. 27. By motion filed on
4 April 27, 2012, petitioner indicated that he was unable to exhaust his claims but sought leave to
5 file an amended petition setting forth a claim that he believed to be exhausted: ground three, a
6 claim of ineffective assistance of counsel. ECF No. 28.

7 By order filed on May 17, 2013, the stay was lifted; petitioner's motion to amend his
8 petition was granted; and petitioner was directed to file within thirty days either an amended
9 petition containing exhausted claims only or a statement of exhausted claims in the original
10 petition on which he elected to proceed. ECF No. 39.

11 On May 30, 2013, petitioner filed a document indicating that he sought to proceed on
12 grounds two and three of his original petition. ECF No. 40. Petitioner also stated that he might
13 seek leave to amend at some point in the future. Thereafter, on September 9, 2013, petitioner
14 filed a motion to amend, seeking to proceed on each of the grounds of his original petition.
15 Plaintiff asserts that his claims have now been exhausted and asks that they be deemed timely due
16 to "extraordinary circumstances" preventing him from filing his exhaustion petition in the state
17 Supreme Court. ECF No. 41.

18 As noted, respondent had filed an answer to all three grounds of the original petition on
19 June 28, 2011. ECF No. 17. The court will grant petitioner's request to proceed on all three
20 grounds of the original petition; however, respondent will have an opportunity to respond to the
21 original petition in its present posture by way of a dispositive motion or an amended answer.

22 Accordingly, IT IS ORDERED that:

23 1. Petitioner's motion for leave to proceed on all three grounds of the original petition
24 (ECF No. 41) (characterized as a motion to amend) is granted to the extent that petitioner
25 maintains all three claims are now exhausted;

26 2. Respondent must file any motion to dismiss or an amended answer within 45 days of
27 the date of this order;

28 3. Thereafter, petitioner must file, within 45 days, an opposition or traverse/reply, as

1 appropriate; if respondent files a motion, following the filing of an opposition by petitioner,
2 respondent will have twenty-one days to file a reply;

3 4. Requests for extensions of time will not be favored absent exceptional circumstances.

4 DATED: September 27, 2013

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE

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