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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL NAGY,
Petitioner,
v.
D. DAVEY, et al.,
Respondents.

No. 2:11-cv-2948 WBS-DAD P

ORDER

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondent’s motion to lift the previously entered stay of this action habeas action.

By way of background, on November 7, 2011, petitioner commenced this action by filing a petition for writ of habeas corpus challenging his 2009 judgment of conviction on multiple state criminal charges. On February 22, 2012, respondent filed an answer to the petition. On April 6, 2012, upon review of the petition, then-assigned Magistrate Judge Moulds determined that the petition was a “mixed” petition containing both exhausted and unexhausted claims and granted petitioner time to file a motion for a stay and abeyance.

On November 9, 2012, Magistrate Judge Moulds construed petitioner’s motion for a stay and abeyance as including a request to delete his unexhausted claims and granted that request. Magistrate Judge Moulds also issued findings and recommendations, recommending that this

1 action be stayed pursuant to procedure outlined in Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003),
2 pending petitioner's exhaustion of his state judicial remedies. On December 5, 2012, the assigned
3 District Judge adopted those findings and recommendations in full and stayed this action.

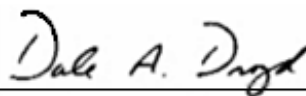
4 More than a year later, on April 3, 2014, counsel for respondent filed the pending motion
5 to lift the stay of this action and represented that petitioner had not filed any state habeas petitions
6 since the court had granted his motion for a stay. Respondent requests that the court proceed to
7 disposition on the petition as it stands as amended pursuant to the court's November 9, 2012
8 order. On June 6, 2014, the undersigned issued an order requiring petitioner to show cause in
9 writing why the current stay should not be lifted with him being required to proceed in this habeas
10 action only on his already exhausted claims. The court invited petitioner to explain any efforts he
11 had undertaken to exhaust his unexhausted claims but warned him that any failure to respond to
12 the order to show cause would result in an order granting respondent's motion to lift the
13 previously entered stay and requiring petitioner to proceed only on his exhausted claims.

14 To date, petitioner has not responded to the court's order to show cause. Under these
15 circumstances, the court will grant respondent's motion to lift the stay of this action. In addition,
16 however, the court will grant petitioner thirty days to file a traverse. If petitioner chooses not to
17 file a traverse he shall so notify the court of that decision in writing within thirty days of this
18 order and this matter will then be deemed submitted for decision.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Respondent's motion to lift the stay of this action (Doc. No. 26) is granted;
21 2. Within thirty days of the date of service of this order, petitioner may file a traverse. If
22 petitioner chooses not to file a traverse he shall so notify the court of that decision in writing
23 within thirty days of this order and, this matter will be deemed submitted for decision.

24 Dated: August 18, 2014

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26 _____
27 DALE A. DROZD
28 UNITED STATES MAGISTRATE JUDGE

27 DAD:9
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