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

XAVIER S. WILLIAMS,

Petitioner,

No. 2:12-cv-0899 CKD 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. Petitioner has consented to this court’s jurisdiction.

On April 6, 2012, petitioner filed a motion to stay this action pending state court exhaustion of certain claims. (Dkt. No. 2.) This court denied the motion to stay on May 23, 2012 (Dkt. No. 9), and subsequently directed petitioner to file an amended petition raising only exhausted claims. (Dkt. No. 11.) However, on October 15, 2012, petitioner filed a motion stating that he “inadvertently failed to alert this Court to the fact that he did not need the stay,” and seeking to proceed on the petition constructively filed on April 18, 2012. (Dkt. No. 12.)

From the record before the court, it is not clear whether petitioner has exhausted all nine claims in his April 2012 petition in the California Supreme Court. See Dkt. No. 5 at 68-

1 100 (state petition raising two claims). Petitioner is advised that the United States Supreme
2 Court has held that a federal district court may not entertain a petition for habeas corpus unless
3 the petitioner has exhausted state remedies with respect to each of the claims raised. Rose v.
4 Lundy, 455 U.S. 509 (1982). A mixed petition containing both exhausted and unexhausted
5 claims must be dismissed. In other words, if the April 2012 petition contains any claims that
6 have not been raised in the California Supreme Court, the entire petition is subject to dismissal.

7 If petitioner still wishes to proceed on the April 2012 petition, he may so inform
8 the court within 30 days. Alternatively, he may file an amended petition omitting all claims
9 except those which have been presented to and rejected by the California Supreme Court.

10 Accordingly, IT IS HEREBY ORDERED THAT:

11 1. Petitioner's motion to correct court's ruling (Dkt. No. 12) is denied;

12 2. Petitioner has 30 days from the date of this order to either (1) confirm that he
13 wishes to proceed on the petition constructively filed April 18, 2012 or (2) file an amended
14 habeas petition omitting all claims except those claims which have been presented to and rejected
15 by the California Supreme Court.

16 Dated: October 31, 2012

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18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE
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