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

AARON MEYERS,

Petitioner,

No. 2:12-cv-0958 GEB JFM P

vs.

WARDEN OF CENTINELA STATE
PRISON,

Respondent.

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. Petitioner challenges his 2009 conviction on charges of first degree murder and a finding that he personally and intentionally discharged a firearm in the commission of the crime. Petitioner raises four claims in his petition, filed on or about April 10, 2012.

On June 6, 2012, respondent moved to dismiss the petition on the ground that petitioner failed to exhaust state court remedies with respect to claims two, three and four of the petition. Petitioner failed to timely file a response to the motion. For that reason, on July 31, 2012, petitioner was ordered to file either an opposition to the motion or a statement of non-opposition within thirty days. On August 29, 2012, petitioner filed a motion for extension of time, which was granted by order filed September 10, 2012.

1 By order filed January 3, 2013, the court found that petitioner had failed to
2 exhaust state court remedies as to his second, third and fourth claims for relief and, therefore,
3 that the original petition in this action is a mixed petition containing both exhausted and
4 unexhausted claims which must be dismissed unless petitioner seeks and obtains a stay of these
5 proceedings to exhaust state court remedies with respect to those claims. See Order filed January
6 3, 2013, at 2-3. Accordingly, the court granted petitioner sixty days to file either a motion to stay
7 these proceedings or an amended petition raising only his exhausted claim, and deferred ruling
8 on respondent's motion to dismiss.

9 On March 11, 2013, petitioner filed a petition for writ of habeas corpus. The
10 petition names the California Supreme Court as respondent, bears a different case number than
11 the one assigned to this action, and contains petitioner's three unexhausted claims for relief. The
12 petition is not accompanied by a motion to stay these proceedings, and it is unclear whether it is a
13 copy of an exhaustion petition filed by petitioner in the California Supreme Court or an amended
14 petition that petitioner seeks to file in this action. If it is the latter, it must be dismissed since it
15 contains only the claims which have been previously identified as unexhausted.

16 Good cause appearing, petitioner will be granted one additional period of fifteen
17 days in which to clarify whether the petition for writ of habeas corpus filed in this action on
18 March 11, 2013, is a copy of a petition that he has also filed in the California Supreme Court and,
19 if so, whether he seeks to stay this action pending disposition of that state court action. Petitioner
20 is cautioned that failure to comply with this order will result in the dismissal of his original
21 petition for writ of habeas corpus on the ground that it is a mixed petition containing
22 unexhausted claims.

23 As noted before, it is plain that the original petition before this court is a mixed
24 petition that must be dismissed unless petitioner seeks and obtains a stay. For the reasons set
25 forth in this order, petitioner will be given an additional period of fifteen days to clarify whether
26 he is moving for a stay of this action pending exhaustion of state court remedies for the three

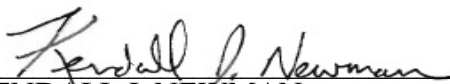
1 claims contained in the petition filed herein on March 11, 2013. Because it is not yet clear
2 whether the original petition should be dismissed order stayed, respondent's unopposed motion
3 to dismiss, which properly identified the three unexhausted claims, will be denied without
4 prejudice to a subsequent order of this court dismissing those claims or the entire original
5 petition following the end of the fifteen day period described in this order and, as appropriate,
6 proceedings on a motion to stay if one is filed.

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

8 1. Respondent's June 6, 2012 motion to dismiss (ECF No. 13) is denied without
9 prejudice; and

10 2. Petitioner is granted fifteen days from the date of this order in which to clarify
11 whether the petition for writ of habeas corpus filed in this action on March 11, 2013, is a copy of
12 a petition that he also filed in the California Supreme Court; and, if appropriate, petitioner shall
13 file a motion to stay these proceedings.

14 DATED: March 19, 2013

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16 
17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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