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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY EARL RICHARD,
Petitioner,
v.
SUSAN HUBBARD,
Respondents.

No. 2:12-cv-1436 GEB DAD P

ORDER

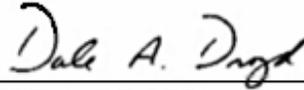
Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 19, 2013, the court granted petitioner’s motion to amend his petition pursuant to the stay and abeyance procedure outlined in Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), stayed this case, and ordered petitioner to exhaust any of his unexhausted claims in state court forthwith. On October 15, 2013, less than a month later, petitioner filed a status report in which he explains that he “was currently in the Superior Court waiting on my issues to be heard . . . which was denied.” He further states he would like to file a motion to lift the stay in this action and proceed with this case.

Petitioner is advised that exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). Petitioner satisfies the exhaustion requirement if he has fairly presented to the California Supreme Court (not a Superior Court) all federal claims before presenting the claims to this federal court. See Baldwin v. Reese,

1 541 U.S. 27, 29 (2004); Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S.
2 270, 276 (1971); Wooten v. Kirkland, 540 F.3d 1019, 1025 (9th Cir. 2008). If petitioner has not
3 fairly presented his claims to the California Supreme Court, petitioner should proceed through the
4 appropriate procedure governing the seeking of habeas relief in state court to do so without delay
5 and continue to file and serve a status report in this case on the first court day of each month. If,
6 on the other hand, petitioner has fairly presented his claims to the California Supreme Court, he
7 may file a motion to lift the stay of this action, together with a motion to amend his petition, and a
8 proposed third amended petition containing only exhausted claims.

9 IT IS SO ORDERED.

10 Dated: October 24, 2013

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12 _____
13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

13 DAD:9
14 rich1436.status