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

RUDOLPH SUMMERFIELD,

Petitioner,

No. 2: 12-cv-1953 GEB DAD P

vs.

V. SINGH,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. On July 31, 2012, respondent was ordered by the court to file a response to the pending habeas petition within sixty days. On September 27, 2012, only a few days before respondent’s response to the habeas petition was due, respondent filed a “Request for Deferral of Briefing and for Order as to the State Court Marsden Hearing Transcripts.” (Dkt. No. 10.) In that request, respondent represents that there were three in camera hearings held in the underlying state court criminal proceedings with respect to petitioner’s request for substitution of appointed counsel brought pursuant to the decision in People v. Marsden, 2 Cal. 3d 118 (1970). Respondent claims that these hearing transcripts would be relevant in addressing the claims raised by petitioner in his federal habeas petition. In this regard, respondent’s counsel states that:

1 experience has shown that California courts are leery about
2 disclosing such matters via an ex parte decision to unseal,
3 particularly given lack of ongoing proceedings in the state court.
4 In the past, this difficulty has been obviated by the federal court
5 directing Respondent to ask the state court to transmit the
6 transcript directly to the federal court, for filing under seal – with
7 the federal court itself then ruling whether to unseal the transcript.

8 (Dkt. No. 10 at p. 2.)

9 Respondent’s counsel is correct that the California Court of Appeal cannot under
10 these circumstances, consistent with state law, simply unseal Marsden hearing transcripts and
11 turn them over to the Attorney General. Those transcripts may or may not contain information
12 relevant to disposition of petitioner’s claims, which do not include a claim that any Marsden
13 motion was erroneously denied in state court, presented in this federal habeas action. That,
14 however, is where this court’s agreement with counsel ends with respect to respondent’s belated
15 presentation of this issue.

16 On July 31, 2012, this court ordered respondent to file all transcripts and other
17 documents relevant to the issues presented in the pending federal habeas petition if respondent
18 elected to file an answer to the petition instead of a motion. There is nothing on the face of the
19 pending petition to suggest that a ruling on a Marsden motion was being placed at issue. Yet,
20 respondent’s counsel waited until September 27, 2012 to file the request now before the court.
21 Given that the request was filed just a few days before the response to the petition was due, it
22 appears clear that respondent was ill-prepared to comply with this court’s July 31, 2012 order by
23 filing a timely answer. If respondent’s counsel was preparing to file a timely response to the
24 petition, it would seem that counsel would have learned of the existence of Marsden hearing
25 transcripts that might possibly be relevant to the pending claims weeks ago and brought the
26 matter to this court’s attention.

Respondent has not filed a response to the habeas petition presumably in light of
this request regarding transcripts. In light of this fact, the court will reluctantly grant
respondent’s request to defer briefing and for an order regarding the Marsden hearing transcripts.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. Respondent's request for deferral of briefing and for an order regarding the
3 state court Marsden hearing transcripts (Dkt. No. 10) is granted.

4 2. This court requests that the California Court of Appeal for the Third Appellate
5 District forward the Marsden hearing transcripts in the case of People v. Summerfield, CO63474
6 to the chambers of the undersigned for in camera review to determine the relevance of those
7 transcripts, or any part thereof, to the claims raised by petitioner in these federal habeas
8 proceedings.

9 3. Counsel for respondent is directed to forward a copy of this order to the Clerk
10 of the California Court of Appeal for the Third Appellate District.

11 4. Upon completion of that in camera review, this court will issue a further order
12 addressing whether any portion of those transcripts is relevant to these proceedings and whether
13 counsel for respondent shall be granted access thereto. At that time the court will set a date by
14 which respondent's answer to the petition shall be filed.

15 DATED: October 17, 2012.

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18 _____
19 DALE A. DROZD
20 UNITED STATES MAGISTRATE JUDGE

19 DAD:dpw
20 summ1953.36marsdent