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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY R. TURNER,
Petitioner,
v.
WILLIAM MUNIZ, Warden,¹
Respondent.

No. 2:13-cv-00454 WBS AC P

ORDER

Petitioner is a state prisoner proceeding through appointed counsel. Presently pending is petitioner’s motion to stay this habeas corpus action filed pursuant to 28 U.S.C. § 2254, pending exhaustion in the state courts of petitioner’s motion for resentencing based on a change in state law (California’s Safe Neighborhoods and Schools Act, enacted in November 2014). Petitioner filed his state court motion for resentencing in March 2015. It was denied by the trial court, then granted in part by the California Court of Appeal on January 15, 2016. On March 30, 2016, the California Supreme Court granted review (Case No. S232272), and stated that it will hold the case pending the outcome of lead case People v. Martinez (Case No. S231826). See ECF No. 69

¹ This court previously substituted as respondent herein Mr. William Muniz, Warden of Salinas Valley State Prison, plaintiff’s place of incarceration. See ECF No. 66 at 1 n.1. As the court previously noted, a federal petition for writ of habeas corpus must name as respondent the state officer having custody of petitioner. See 28 U.S.C. § 2254; Rule 2(a), Rules Governing Section 2254 Cases in the U.S. District Courts; Smith v. Idaho, 392 F.3d 350, 354-55 (9th Cir. 2004); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).

1 and exhibits thereto.

2 Petitioner's counsel states that she has conferred with respondent's counsel, who does not
3 oppose the instant motion to stay this action. See ECF No. 69 at 2. However, this representation
4 is not made under penalty of perjury, and respondent has filed nothing memorializing his non-
5 opposition. Respondent opposed petitioner's previous motion for a stay. See ECF No. 61.

6 Moreover, this court has previously found that a stay is not appropriate under the
7 circumstances presented here, where petitioner must file a new federal petition for writ of habeas
8 corpus to challenge any new state resentencing judgment. See ECF No. 63 (Jan. 5, 2016).

9 For these reasons, respondent will be directed to file a response to petitioner's pending
10 motion.

11 Petitioner has scheduled this matter for hearing before this court on August 24, 2016. The
12 undersigned has determined that a hearing is unnecessary in this matter and issues the following
13 briefing schedule.

14 For good cause shown, IT IS HEREBY ORDERED that:


15 1. Respondent shall, within twenty-one days after the filing date of this order, file and
16 serve a response to petitioner's motion to stay.

17 2. Petitioner may, within seven days after service of respondent's response, file and serve
18 a reply.

19 3. The hearing scheduled for August 24, 2016 is vacated; the court will decide the merits
20 of petitioner's motion on the papers unless the undersigned later determines that a hearing would
21 be helpful.

22 SO ORDERED.

23 DATED: June 15, 2016

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25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE
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