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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM DALBY,
Petitioner,
v.
RON RACKLEY, Warden,¹
Respondent.

No. 2:13-cv-01169 TLN KJN P

ORDER

Petitioner is a state prisoner, currently incarcerated at the California Department of Corrections and Rehabilitation’s California Health Care Facility, in Stockton. Petitioner proceeds pro se and in forma pauperis in this habeas corpus action filed pursuant to 28 U.S.C. § 2254. Petitioner challenges his conviction on sixteen counts of aggravated sexual assault of a child under the age of fourteen, one count of oral copulation, and one count of failure to appear on a felony charge while released on bail. Petitioner also challenges his sentence to a determinate prison term of six years and eight months, and an indeterminate term of 240 years to life.

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¹ Warden Rackley is substituted as respondent herein. 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 Currently pending is respondent's motion to dismiss or stay this action. For the reasons
2 that follow, further briefing is ordered.

3 Petitioner filed his federal habeas petition on June 5, 2013. On December 16, 2013,
4 respondent filed the pending motion to dismiss or stay, and informed the court that a re-
5 sentencing hearing was scheduled in this case in the Yolo County Superior Court on January 31,
6 2014. That hearing, required by a remand order issued by the California Court of Appeal on
7 November 2, 2004, had been overlooked in the Yolo County Superior Court until respondent's
8 counsel made an inquiry in this action.² In his opposition to the motion, filed on January 16,
9 2014, petitioner acknowledges that this matter was "forgotten" in the state courts, and argues that
10 the delay was unconstitutional and warrants "being set free." (ECF No. 19 at 2.)

11 There has been no briefing in this action since the scheduled January 31, 2014 hearing in
12 the Yolo County Superior Court. Therefore, the parties will be required to file and serve further
13 briefing in light of the subsequent superior court proceedings (assuming they took place). In
14 addition, petitioner's motion (ECF No. 18), opposing respondent's request for an extension of
15 time within which to file a response to the habeas petition and/or for default judgment,³ will be

16 _____
17 ² In her declaration filed in support of respondent's motion to dismiss or stay, Deputy Attorney
General Michelle Rubio states in pertinent part (ECF No. 18-2 at 2 (numbered paras. omitted)):

18 On or about November 14, 2013, I contacted the Yolo County
19 Superior Court to inquire about the remand by the Court of Appeal
in People v. Dalby, No. C031880, regarding sentencing on counts 1
20 to 3, 9 to 20, and 22, and to acquire an amended abstract of
judgment.

21 The superior court clerk was alarmed when she researched the case
22 and learned that the resentencing had never occurred and that the
case inadvertently slipped through the cracks. The clerk informed
23 me that the superior court would immediately work towards
resolving the issue.

24 On December 12, 2012 (sic), I again inquired with the superior
25 court regarding the resentencing. I was informed that a hearing was
set in the Yolo County Superior Court in People v. Dalby, Case No.
26 CR-F-99-3920, for Friday, January 31, 2014, at 8:30 a.m. [Notice
of Hearing attached.]

27 ³ The court finds that petitioner's alternative ground, a motion for default judgment based on
28 respondent's anticipated failure to file a timely response, is frivolous.

1 denied as moot.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Respondent shall, within fourteen (14) days after the filing date of this order, file and
4 serve one of the following: (a) a Supplemental Brief in Support of the pending Motion to Dismiss
5 or Stay; OR (b) an Amended Motion to Dismiss or Stay.

6 2. Petitioner shall, within twenty-one (21) days after service of respondent's new briefing,
7 file and serve one of the following: (a) a Supplemental Opposition to the pending Motion to
8 Dismiss or Stay; OR (b) an Opposition to the Amended Motion to Dismiss or Stay.

9 3. If respondent's new briefing is an Amended Motion to Dismiss or Stay, respondent
10 may, within seven (7) days after the filing date of petitioner's response, file and serve a reply.

11 4. Petitioner's motion (ECF No. 18), in opposition to respondent's request for extension of
12 time, is denied as moot.

13 SO ORDERED.

14 Dated: June 10, 2014

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE