

1 motion, filed on January 16, 2014, petitioner acknowledges that this
2 matter was “forgotten” in the state courts, and argues that the delay
3 was unconstitutional and warrants “being set free.” (ECF No. 19 at
4 2.)

5 There has been no briefing in this action since the scheduled
6 January 31, 2014 hearing in the Yolo County Superior Court.
7 Therefore, the parties will be required to file and serve further
8 briefing in light of the subsequent superior court proceedings
9 (assuming they took place). . . .

10 Respondent now informs the court that the superior court hearing scheduled for January
11 31, 2014, was rescheduled three times, most recently to July 25, 2014. (See ECF No. 23 and 23-1
12 (Rubio Decl.)) Respondent requests that the court “abstain from evaluating Petitioner’s sentence
13 at the present time,” citing Younger v. Harris, 401 U.S. 37 (1971) (federal courts may not
14 interfere in pending state criminal proceeding absent extraordinary circumstances). (ECF No. 23
15 at 2.) Respondent requests that “this matter be dismissed without prejudice or, in the alternative,
16 stayed until the outcome of sentencing is known.” (Id.) Although the superior court hearing may
17 have recently taken place, this court will dismiss respondent’s pending motion to dismiss without
18 prejudice, as both parties will require an opportunity to consider the superior court’s decision and
19 its implications in this action.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Respondent’s motion to dismiss (ECF No. 18) is denied without prejudice.

22 2. Petitioner shall, within 60 days after the filing date of this order, file and serve a
23 statement informing the court of the status of his re-sentencing in the Yolo County Superior
24 Court. If re-sentencing has occurred, petitioner shall also inform the court whether he intends to
25 rely on his original petition filed June 5, 2013, or request leave to file an amended petition; if the
26 latter, petitioner shall also state whether he will request that this action be staying pending
27 exhaustion of state court remedies on new claim(s).

28 3. Thereafter, the court will schedule appropriate deadlines.

Dated: July 28, 2014


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE