

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

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

ORDER

On July 28, 2014, this court denied without prejudice respondent’s motion to dismiss petitioner’s habeas petition, due to the pendency of petitioner’s re-sentencing hearing in the Yolo County Superior Court. (ECF No. 24.) Petitioner was directed to file and serve a statement informing the court of the status of the Yolo County Superior Court hearing, and how petitioner wishes to proceed in the instant action. Petitioner informed the court that, as of August 12, 2014, the state court hearing had not been convened nor petitioner informed of a future date. (ECF No. 25.)

Due to the pendency of the state court proceedings, this court may not act on petitioner’s instant federal habeas petition, because petitioners’ sentencing claim herein may be altered by the state court’s decision. It is appropriate for this court to abstain in the instant action until the state court rules. See Younger v. Harris, 401 U.S. 37 (1971); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813-14 (1976). Moreover, should petitioner wish to continue to

1 assert a federal sentencing claim, he must exhaust that claim in the state courts before proceeding  
2 in this court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083,  
3 1086 (9th Cir. 1985). These circumstances warrant a stay in this action until the Yolo County  
4 Superior Court acts, and petitioner then decides how he wishes to proceed.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. This action is stayed until further order of this court, with the exception of the  
7 following reporting requirements imposed on both parties.

8 2. Within fourteen (14) days after petitioner's re-sentencing in the Yolo County Superior  
9 Court, petitioner and respondent shall file and serve separate statements informing this court of  
10 the date and outcome of the state court proceedings; in addition, petitioner shall inform the court  
11 how he wishes to proceed with the instant federal action.

12 3. Pending a decision by the Yolo County Superior Court, the parties shall file and serve  
13 separate statements, every sixty (60) days commencing with the filing date of this order, that  
14 inform this court of the ongoing status of the state court proceedings.

15 Dated: August 21, 2014

16  
17 /dalb1169.fb.2

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE