

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

EDWARD FRANCIS SCIOSCIOLE,
Petitioner,
v.
GOWER,
Respondent.

No. 2:13-cv-2438 CKD P

ORDER

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. He is serving a sentence of 30 years-to-life imprisonment for second degree robbery and certain sentence enhancements.¹ Both parties have consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

Petitioner’s motion for leave to file an amended petition is before the court as is the proposed amended petition. From the briefing before the court, and a review of the record, it is clear that petitioner has not exhausted state court remedies with respect to any new claims not presented in his original petition. That being the case, petitioner’s motion for leave to amend will be denied.²

¹ Petitioner was sentenced pursuant to California’s “Three Strikes Law.”

² The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1).

1 If petitioner would like to return to state court to exhaust state court remedies with respect
2 to additional claims, he must, within 30 days, file a motion for a stay in which he clearly
3 identifies his new claims and explains the delay in exhausting state court remedies. If petitioner
4 does not file a motion for a stay within 30 days, this action will proceed on petitioner's original
5 petition for writ of habeas corpus which is already fully briefed.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Petitioner's motion for leave to file an amended petition for writ of habeas corpus
8 (ECF No. 30) is denied;
- 9 2. Petitioner's amended petition for writ of habeas corpus (ECF No. 26) is stricken;
- 10 3. Petitioner is granted 30 days within which to file a motion to stay this action which
11 conforms with the requirements listed above; and
- 12 4. Petitioner's failure to file a motion to stay which conforms to the requirements of this
13 order within 30 days will result in this matter proceeding on petitioner's original petition for writ
14 of habeas corpus.

15 Dated: March 26, 2015

16 
17 _____
18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE

20 1
21 scio2438.mta