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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM R. MCCONNELL,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:13-cv-2517 JAM KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel. On January 16, 2015, petitioner filed a motion for order to correct and augment the record. Petitioner contends that respondent failed to lodge “critical portions of the record,” specifically, the complete record of habeas corpus proceedings in the Superior Court. Petitioner claims that the failure of respondent to provide the “Superior Court’s two separate, and detailed decisions that denied” petitioner’s habeas relief addressing claims 1, 2, and 3 in the instant petition, deprived petitioner an opportunity to argue that such reasoned decisions were contrary to, or an unreasonable application of federal law. (ECF No. 37 at 2.) Petitioner did not provide a superior court case number or provide copies of any filings or rulings in or by the Plumas County Superior Court on a petition for writ of habeas corpus.

However, the Rules Governing Section 2254 Cases provides that the answer “must also indicate what transcripts . . . are available,” and respondent must attach “parts of the transcript

1 that the respondent considers relevant.” Rule 5(c), 28 U.S.C. foll. § 2254. “The judge may order
2 that the respondent furnish other parts of existing transcripts.” Id.

3 On January 22, 2015, the court issued a briefing order on petitioner’s motion to augment
4 or correct the record, but respondent did not file an opposition or otherwise respond to
5 petitioner’s motion. Respondent’s motion to dismiss did not recount the filing of petitions for
6 writs of habeas corpus in the Plumas County Superior Court. (ECF No. 15.) Neither notice of
7 lodging filed by respondent reflects the lodging of a petition for writ of habeas corpus or denial of
8 such petition by the Plumas County Superior Court. (ECF Nos. 16, 30.) The court has reviewed
9 the documents lodged by respondent, and there is no indication that petitioner filed a petition for
10 writ of habeas corpus in the Plumas County Superior Court. The findings and recommendations
11 issued on August 12, 2014, did not reflect the filing of such a petition (ECF No. 26 at 2-3), and
12 petitioner did not object to the background as articulated therein.

13 However, in his answer, respondent does not affirmatively state that the Plumas County
14 Superior Court was contacted and no petition for writ of habeas corpus was filed. (ECF No. 29.)
15 In addition, respondent did not argue that any reasoned decision by the Plumas County Superior
16 Court on such a petition for writ of habeas corpus was not relevant. (Id.) In any event, if
17 petitioner filed petitions for writs of habeas corpus in the Plumas County Superior Court, and
18 reasoned decisions on claims contained in the instant petition were issued by the Plumas County
19 Superior Court, such documents are relevant and should be lodged herein. See Cannedy v.
20 Adams, 706 F.3d 1148, 1158-59 (9th Cir. 2013) (holding that the “look through” doctrine¹
21 survives Harrington v. Richter, 131 S. Ct. 770 (2011)); Richter, 131 S. Ct. at 785 (stating that the
22 presumption that a state court’s summary denial is an adjudication on the merits “may be
23 overcome when there is reason to think some other explanation for the state court’s decision is
24 more likely”).

25 ¹ Where there is no reasoned decision from the state’s highest court, the Court “looks through” to
26 the underlying appellate court decision. Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991). “It
27 has long been the practice of federal habeas courts to “look through” summary denials of claims
28 by state appellate courts and review instead the last reasoned state-court decision.” Williams v.
Cavazos, 646 F.3d 626, 635 (9th Cir. 2011), overruled on other grounds by Johnson v. Williams,
133 S. Ct. 1088 (2013).

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Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner’s motion (ECF No. 37) is partially granted;

2. Within seven days from the date of this order, respondent shall contact the Plumas County Superior Court to obtain copies of petitions for writs of habeas corpus filed by petitioner and rulings thereon, if any;

3. Upon receipt of such documents, respondent shall lodge them with this court, and shall advise the court whether respondent intends to file an amended answer or stand on the previously-filed answer; in the alternative, if no such documents exist, respondent shall forthwith file such notice; and

4. Petitioner’s obligation to file a traverse is suspended until further order of court.

Dated: March 5, 2015

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE