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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

D'ARSEY L. BOLTON,  
Petitioner,  
v.  
SCOTT McEWEN,  
Respondent.

No. 2:14-cv-0803 GEB CKD P

ORDER

On January 8, 2015, respondent moved to dismiss petitioner's First Amended Petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 23.) One month later, after litigating this action pro se, petitioner obtained counsel. (ECF No. 28.)

Before the court is petitioner's motion to amend the petition, accompanied by a proposed Second Amended Petition. (ECF Nos. 26, 27.) Petitioner, through counsel, argues that petitioner's claims have so far been presented in a "piecemeal, disjointed, confusing manner," and the proposed Second Amended Petition presents a "coherent, understandable version" of these claims. (ECF No. 26.)

The operative First Amended Petition raises four claims: (1) Denial of effective assistance of counsel; (2) conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defense; (3) perjury; and (4) sentence greater than legislature intended. (ECF No. 22 at 4-5.) Respondent has moved to dismiss the petition on the grounds that it is both

1 untimely and “mixed,” as one claim is allegedly unexhausted. (ECF No. 23.)

2 The proposed Second Amended Petition raises two claims: ineffective assistance and  
3 prosecutorial misconduct with respect to missing evidence. (ECF No. 27.) Both are presented  
4 more fully and coherently than in the operative petition.

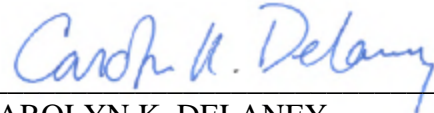
5 Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend shall be given  
6 freely when justice requires. In deciding whether justice requires granting leave to amend, factors  
7 to be considered include the presence or absence of undue delay, bad faith, dilatory motive,  
8 repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing  
9 party, and futility of proposed amendment. Based on the foregoing factors, the undersigned  
10 concludes that justice requires leave to amend in this instance.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Respondent’s motion to dismiss (ECF No. 23) is denied without prejudice to renewal;
- 13 2. Petitioner’s motion to amend (ECF No. 26) is granted;
- 14 3. This action shall proceed on the Second Amended Petition (ECF No. 27);
- 15 4. Respondent is directed to file a response to petitioner’s amended habeas petition within

16 30 days from the date of this order. See Rule 4, 28 U.S.C. foll. § 2254.

17 Dated: February 18, 2015



18 CAROLYN K. DELANEY  
19 UNITED STATES MAGISTRATE JUDGE

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