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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREDERICK TANNER,
Petitioner,
v.
STU SHERMAN,
Respondent.

No. 2:16-cv-0581 GEB KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel. On September 14, 2016, respondent filed a motion to dismiss on the grounds that claims 5 and 6, and a large portion of claim 3, were not exhausted. Petitioner filed an opposition, accompanied by a motion for stay and abeyance. Petitioner’s motion for stay and abeyance was denied, but he was granted leave to renew his motion. (ECF No. 19.) Subsequently, petitioner filed two additional motions for stay, another motion for appointment of counsel, as well as a motion to accept claims 3, 5 and 6, because such claims were denied by the California Supreme Court on November 9, 2016 (ECF No. 22 at 2). Petitioner provided a copy of the habeas petition filed in the California Supreme Court; claims 5 and 6 were listed in the petition, and his entire claim 3 was attached and incorporated by reference in the petition. (ECF No. 21 at 5, 11-16; 19-27.)

Because the California Supreme Court has now addressed the habeas petition, and denied the petition on November 9, 2016, no further stay of this action is required, and the motions are

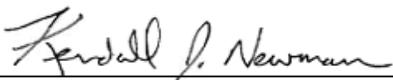
1 now moot. In addition, because such claims are now exhausted, respondent's motion to dismiss
2 is moot. This ruling does not address the application of the Antiterrorism and Effective Death
3 Penalty Act's ("AEDPA") one-year limitation period.

4 Petitioner has requested the appointment of counsel. There currently exists no absolute
5 right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460
6 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage
7 of the case "if the interests of justice so require." See Rule 8(c), Fed. R. Governing § 2254 Cases.
8 In the present case, the court does not find that the interests of justice would be served by the
9 appointment of counsel at the present time.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Petitioner's motions (ECF No. 21, 22, 24) are denied as moot;
- 12 2. Respondent's motion to dismiss (ECF No. 14) is denied as moot;
- 13 3. Petitioner's motion for appointment of counsel (ECF No. 25) is denied without
14 prejudice;
- 15 4. Respondent is directed to file a response to petitioner's habeas petition within sixty
16 days from the date of this order. See Rule 4, 28 U.S.C. foll. § 2254. An answer shall be
17 accompanied by all transcripts and other documents relevant to the issues presented in the
18 petition, unless otherwise provided. See Rule 5, 28 U.S.C. foll. § 2254;
- 19 5. If the response to the habeas petition is an answer, petitioner's reply, if any, shall be
20 filed and served within thirty days after service of the answer; and
- 21 6. If the response to the habeas petition is a motion, petitioner's opposition or statement
22 of non-opposition to the motion shall be filed and served within thirty days after service of the
23 motion, and respondent's reply, if any, shall be filed and served within fourteen days thereafter.

24 Dated: March 3, 2017

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26 _____
27 KENDALL J. NEWMAN
28 UNITED STATES MAGISTRATE JUDGE