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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN RANDOLPH WOOD,

Petitioner,

v.

JOSIE GASTELO, Warden,

Respondent.

No. 2:16-cv-2621 MCE KJN P

ORDER

Petitioner is a state prisoner, proceeding in forma pauperis and without counsel. Respondent requested an order suspending the briefing schedule pending submission of the trial record, and asks the court to direct petitioner to provide the transcript from the sealed Marsden hearing in state court, which petitioner cited in the petition (ECF No. 1 at 108). If petitioner does not have a copy of the sealed Marsden hearing transcript, respondent seeks a finding from this court that the hearing transcript is potentially relevant, requiring an order that respondent produce the Marsden hearing transcript. (ECF No. 22 at 2, citing 28 U.S.C. § 2254(f).) Because the Marsden hearing was confidential, and the transcript sealed by the state court, respondent cannot obtain a copy absent petitioner’s express or implied waiver. (ECF No. 22 at 1 n.1.)

In addition to citing the confidential Marsden hearing transcript, petitioner raised ineffective assistance of counsel claims implicating the state court’s ruling on petitioner’s Marsden motion. Thus, if petitioner possesses a copy of the sealed transcript, he is directed to

1 provide respondent with a copy of the Marsden hearing transcript within thirty days from the date  
2 of this order. No later than thirty days from the date of this order, petitioner shall file a notice  
3 with this court indicating whether or not he has provided the Marsden hearing transcript to  
4 respondent, or whether petitioner does not have a copy of such transcript, or is otherwise unable  
5 to provide a copy. If petitioner has a copy of the Marsden hearing transcript, providing such copy  
6 to respondent will expedite briefing in this matter.

7 In the meantime, the briefing requirements set forth in the April 14, 2017 order are  
8 suspended. A new scheduling order will issue once the Marsden hearing transcript has been  
9 located and provided to respondent.

10 Good cause appearing, IT IS HEREBY ORDERED that:

- 11 1. Respondent request (ECF No. 22) is granted;
- 12 2. If petitioner possesses a copy of the sealed Marsden hearing transcript and is able to  
13 provide it, petitioner shall provide a copy of the transcript to respondent within thirty days from  
14 the date of this order;
- 15 3. Within thirty days from the date of this order, petitioner file a notice with the court  
16 indicating whether or not he has provided the Marsden hearing transcript to respondent; and
- 17 4. The briefing requirements set forth in the April 14, 2017 order are suspended, and both  
18 parties are relieved of their obligation to file briefing pending further order of court.

19 Dated: April 21, 2017

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21 KENDALL J. NEWMAN  
22 UNITED STATES MAGISTRATE JUDGE

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