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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DIRK J. BOUIE, Jr.,

 Petitioner,

 v.

ROBERT FOX, Warden,

 Respondent.

No. 2:17-cv-2044 TLN AC P

ORDER

This habeas corpus action filed pursuant to 28 U.S.C. § 2254 is pending for decision on respondent’s motion to dismiss, and petitioner’s motion to stay. It has come to the attention of the court that the state court record filed by respondent does not include a copy of the California Supreme Court’s January 11, 2017 order denying habeas relief. Instead, respondent has submitted only a docket report from the California Supreme Court, indicating that the petition was denied on January 11, 2017. ECF No. 11-5 at 2. In the experience of the undersigned, it is common practice in federal habeas cases for Deputies Attorney General to lodge California Supreme Court docket reports in lieu of the actual orders denying habeas petitions. This practice does not permit the court to perform the review required by 28 U.S.C. § 2254.

A docket report is not an order and does not conclusively establish the contents of the orders it references. A docket report summarizes the procedural history of a case. It documents the fact that relief was denied, but does not establish to the court’s satisfaction whether or not the

1 denial was without comment or citation. The presence or absence of any stated reason for denial,
2 no matter how briefly identified, or any citation to authority, has potential consequences for
3 review under § 2254. See Cullen v. Pinholster, 131 S. Ct. 1388, 1399 (2011) (focus of 2254(d)
4 review is “what a state court. . . did”); Ylst v. Nunnemaker, 501 U.S. 797, 806 (1991) (where
5 state court’s denial is unexplained, federal court must “look through” it to last reasoned decision);
6 Frantz v. Hazey, 533 F.3d 724, 738 (9th Cir. 2008) (en banc) (where state court’s denial is
7 explained, federal court’s analysis is limited to its actual reasoning and analysis); Cone v. Bell,
8 556 U.S. 449, 472 (2009) (where state court denial rests on procedural ground, federal court
9 conducts de novo review of merits).

10 The undersigned is aware from experience that California Supreme Court docket sheets
11 generally do reflect the content of orders denying habeas relief, including any citation to a
12 procedural bar. However, the docket reports are not the source documents. In light of this court’s
13 duty to review what the state court actually did, the lodged state court record must include all
14 state court orders denying relief. A docket report or similar substitute is not sufficient.

15 Accordingly, within fourteen (14) days after the filing date of this order, counsel for
16 respondent is HEREBY ORDERED to file (or lodge in paper) a copy of the California Supreme
17 Court’s order dated January 11, 2017 denying petitioner habeas relief.

18 DATED: July 20, 2018

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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