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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VERNON RAY WILLIAMS,
Petitioner,
v.
ROBERT NEUSCHMID,
Respondent.

No. 2:18-cv-0989 MCE AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Before the court are respondent’s motion to dismiss and petitioner’s motion for discovery and for personnel records. ECF Nos. 16, 23. In an unsolicited surreply opposing the motion to dismiss, petitioner requests a stay of these proceedings pending exhaustion of state court remedies. ECF No. 21 at 2. For the reasons stated below, petitioner’s motion for discovery will be denied. In addition, the undersigned will recommend that petitioner’s motion to stay these proceedings be denied and that respondent’s motion to dismiss be granted.

I. BACKGROUND

On March 4, 2015, petitioner was convicted of corporal injury to a spouse or cohabitant in violation of California Penal Code § 273.5(a) and of assault causing great bodily injury in violation of California Penal Code § 243(d). See ECF No. 18-1 at 1. Enhancements charged, including one for a previous conviction, were found to be true. See id. On April 24, 2015,

1 petitioner was sentenced to serve nineteen years in state prison. See ECF No. 18-1 at 1-2.

2 II. PROCEDURAL HISTORY

3 A. State Post-Conviction Proceedings¹

4 Petitioner appealed his conviction to the California Court of Appeal. The appeal appears
5 to have raised two claims:² (1) that the trial court erred in denying his motion for a mistrial based
6 upon juror misconduct, and (2) that the trial court erred when it failed to instruct the jury sua
7 sponte on the elements of stalking. See ECF No. 18-2 at 2. In March 2017, the state appellate
8 court affirmed the trial court judgment. See id. at 1, 9. On or around April 20, 2017, petitioner
9 filed a petition for review in the California Supreme Court. ECF No. 18-3. The petition
10 presented a single claim: that the trial court had denied petitioner his right to an impartial jury
11 when it failed to grant his motion for a mistrial based upon juror misconduct. See id. at 15-27.
12 On May 24, 2017, the California Supreme Court summarily denied the petition for review. ECF
13 No. 18-4.

14 Respondent represents here that petitioner filed a single application for state collateral
15 relief, a habeas petition that was submitted to the superior court.³ See ECF No. 16 at 2, n.1.
16 Petitioner has provided a copy of the superior court's decision denying the petition, which is

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20 ¹ Respondent failed to lodge the complete state court record on appeal, explaining that the
21 appellate briefing does “not bare [sic] on exhaustion, the basis of this motion to dismiss.” ECF
22 No. 16 at 2 n.1. Counsel is reminded that Rule 5 of the Rules Governing § 2254 Cases requires
23 respondent to file with the answer briefs submitted in appellate courts by petitioner and the
24 prosecution as well as court opinions and dispositive orders. See Rules Governing § 2254 Cases,
25 Rule 5(b), (d)(1)-(3). Although this requirement may not apply with full force when a motion to
26 dismiss is filed in lieu of an answer, questions of exhaustion often do require judicial review of
27 the entire state court post-conviction record and the undersigned prefers as a general matter to
28 have the entire record.

² Because respondent did not provide petitioner's brief on appeal, the claims raised are gleaned
from the opinion of the California Court of Appeal. See generally ECF No. 18-2.

³ Respondent did not lodge a copy of the state habeas petition with this court. Although the
undersigned well understands that only petitions filed in the state's highest court have the effect
of exhausting claims, the best practice in federal habeas is for respondent to provide all state post-
conviction applications and resulting orders.

1 dated January 8, 2018.⁴ See ECF No. 19 at 7-9. Petitioner did not seek further review of his
2 collateral claims.

3 B. Federal Proceedings

4 On April 23, 2018, the petition was docketed. ECF No. 1. It presents the following
5 claims: (1) prosecutorial misconduct for withholding evidence that Sacramento County Police
6 Officer John Tennis, the key prosecution witness, had a domestic violence charge in his
7 background; (2) unconstitutional failure to disclose the facts that in 2014, around the time Officer
8 Tennis appeared at petitioner’s preliminary hearing, he had been arrested for a DUI and that in
9 2017, the Sacramento County Police Department terminated him; (3) improper imposition of one
10 of the sentencing enhancements given that the words “serious” and “great” essentially connote the
11 same degree of bodily injury; (4) failure to submit to a jury the factual determination that any
12 charged offenses were serious ones; and (5) trial court failure to properly assess the violent and/or
13 felony nature of petitioner’s two strike priors. Id. at 5-12.

14 The petition itself acknowledges that the alleged withholding of evidence, as well as
15 Claims Three and Four, have not previously been presented to any court. See ECF No. 1 at 13.
16 Petitioner states that these claims were not previously presented due to “lack of knowledge and
17 resources.” See id.

18 On October 11, 2019, respondent filed the instant motion to dismiss and lodged related
19 state court documents. ECF Nos. 16, 18. Petitioner’s opposition was filed on November 1, 2019.
20 ECF No. 19. Respondent filed a reply on November 15, 2019, and on December 4, 2019,
21 petitioner filed a document that the court has construed as a surreply. See ECF Nos. 20, 21.

22 III. MOTION TO DISMISS

23 Respondent contends that the only claim petitioner has presented to the California
24 Supreme Court was his direct appeal issue regarding juror misconduct. Because none of the
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26 ⁴ The superior court decision indicates that that petitioner argued: (1) that his rights were violated
27 when the prosecution failed to disclose the domestic violence and DUI information about Officer
28 Tennis, and (2) that other newly discovered evidence about Officer Tennis related to his
involvement in a shooting and his employment status at the Sacramento Police Department was
newly discovered evidence to be considered. See ECF No. 19 at 7-9.

1 claims included in the federal petition were ever presented to the state’s highest court, respondent
2 argues that the petition is wholly unexhausted and therefore must be dismissed.

3 In opposition, petitioner relies primarily on the habeas petition that was presented to the
4 Sacramento County Superior Court. He attaches a copy of the first page of that petition, along
5 with the order denying relief. See ECF No. 19 at 6-9. These attachments show that petitioner
6 raised two claims: (1) that the prosecutor failed to disclose Officer Tennis’ 2012 domestic
7 violence charge and his 2014 DUI, and (2) that new evidence of Officer Tennis’s involvement in
8 a 2016 fatal shooting should be considered by the court. See id. at 7-9. Petitioner also argues to
9 this court that both his trial and appellate counsel provided ineffective assistance. Id. at 3-5. He
10 attaches a letter from appellate counsel informing him that he is “free to pursue a federal district
11 court petition for writ of habeas corpus.” Id. at 10.

12 Respondent’s reply reiterates that none of the federal claims were included in the petition
13 for review, nor presented in a habeas petition to the California Supreme Court, and therefore none
14 are exhausted. Petitioner’s unauthorized surreply does not substantively contest non-exhaustion.
15 Instead, petitioner argues that all five claims in the federal petition are true; that his allegations
16 about Officer Tennis are true; that the prosecution withheld exculpatory evidence; and that his
17 sentence was improperly calculated. Petitioner also asks that the court order a stay of these
18 proceedings, presumably so he can return to state court and exhaust the claims in the instant
19 petition. See ECF No. 21 at 2.

20 IV. DISCUSSION

21 A. Applicable Law

22 A state prisoner must exhaust his state court remedies before a federal court may consider
23 granting habeas corpus relief. 28 U.S.C. § 2254(b)(1); see Cullen v. Pinholster, 563 U.S. 170,
24 182 (2011); Peterson v. Lampert, 319 F.3d 1153, 1155 (9th Cir. 2003) (en banc). A petitioner
25 satisfies the exhaustion requirement by providing the highest state court with a full and fair
26 opportunity to consider all claims before presenting them to the federal court. O’Sullivan v.
27 Boerckel, 526 U.S. 838, 845 (1999); Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v.
28 Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985).

1 B. Analysis

2 1. The Federal Petition Is Wholly Unexhausted

3 Respondent is correct that petitioner’s failure to have presented the claims of the federal
4 petition to the California Supreme Court renders the petition wholly unexhausted. Petitioner does
5 not dispute that his only California Supreme Court challenge to his conviction was the petition for
6 review. It raised a single claim, juror misconduct, that is not included in the federal petition. The
7 California Supreme Court clearly was not provided a full and fair opportunity to consider the five
8 claims of the federal petition, none of which were presented to it. Accordingly, the petition is
9 wholly unexhausted and must be dismissed. See Jimenez v. Rice, 276 F.3d 478, 481 (9th Cir.
10 2001); Greenawalt v. Stewart, 104 F.3d 1268, 1274 (9th Cir. 1997).

11 2. A Stay is Not Appropriate

12 Petitioner’s request for a stay is included in an unauthorized surreply rather than being
13 properly presented by motion, but the undersigned will nonetheless consider the matter. Rhines
14 v. Weber, 544 U.S. 269 (2005) governs stays of petitions that are wholly unexhausted. See Mena
15 v. Long, 813 F.3d 907, 910 (9th Cir. 2016). To obtain a stay, petitioner must show (1) good
16 cause for failure to have exhausted all claims in state court prior to filing the federal petition; (2)
17 the potential merit of the unexhausted claims; and (3) diligence in pursuing the claims. Rhines,
18 544 U.S. at 277-78; see Jackson v. Roe, 425 F.3d 654, 660-61 (9th Cir. 2005).

19 Petitioner makes no effort to present any of the Rhines factors to the court, and the record
20 indicates that any attempt to do so would be futile. Petitioner’s opposition to dismissal provides
21 no reason for having failed to exhaust, and his statement in the petition that the claims were not
22 exhausted due to “lack of knowledge and resources” (ECF No. 1 at 13) does not constitute good
23 cause. See Wooten v. Kirkland, 540 F.3d 1019, 1024 (9th Cir. 2008) (ignorance or confusion
24 about exhaustion status of claims not “good cause”); Torres v. McDowell, 292 F. Supp. 3d 983,
25 988 (C.D. Cal. 2017) (no “good cause” for failure to pursue state claims beyond superior court
26 where petitioner lacked legal understanding of process).

27 To the extent that petitioner relies on his appellate lawyer’s correspondence, stating upon
28 conclusion of direct appeal that petitioner was “free to pursue a federal district court petition for

1 writ of habeas corpus,” ECF No. 19 at 10, counsel did not make any erroneous representations
2 regarding exhaustion. Indeed, counsel provided no affirmative information about federal habeas
3 practice, procedure, or prerequisites. Accordingly, nothing in the letter even arguably rises to the
4 level of ineffective assistance of counsel that might demonstrate cause under Rhines. Compare
5 Blake v. Baker, 745 F.3d 977 (9th Cir. 2014) (factually supported claim of ineffective assistance
6 of counsel in capital post-conviction proceedings can support cause under Rhines for having
7 failed to exhaust claims that trial counsel presented deficient mitigation case). Here, the
8 correspondence from counsel is consistent with petitioner’s asserted lack of knowledge of the
9 exhaustion requirement—which is inadequate as a matter of law to support cause under Rhines—
10 but not consistent with ineffective appellate representation. Accordingly, here as in Wooten the
11 asserted lack of knowledge is inadequate.

12 Furthermore, it does not appear that petitioner’s unexhausted claims are potentially
13 meritorious. Even if Officer Tennis had been arrested for domestic violence or DUI prior to
14 giving testimony in petitioner’s case, as alleged, those incidents would not have been admissible
15 to impeach him and therefore could not be considered material under Brady v. Maryland, 373
16 U.S. 83, 87 (1963) and progeny. Officer Tennis’s involvement in a fatal shooting and his
17 termination from employment are alleged to have occurred *after* petitioner’s trial, so they cannot
18 be relevant to the constitutionality of petitioner’s conviction. Claims Three through Five present
19 questions of state law—regarding sentencing and statutory interpretation—which cannot support
20 federal habeas relief. See Lewis v. Jeffers, 497 U.S. 764, 780 (1990) (federal habeas relief does
21 not lie for errors of state law); Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir. 1985) (habeas
22 relief is unavailable for alleged error in the interpretation or application of state law); Miller v.
23 Vasquez, 868 F.2d 1116, 1118-19 (9th Cir. 1989) (declining to address “[w]hether assault with a
24 deadly weapon qualifies as a ‘serious felony’ under California’s sentence enhancement provisions
25 [because it] is a question of state sentencing law”). For these various reasons, the Rhines
26 standard is not met and a stay pending exhaustion would constitute an abuse of discretion. See
27 Rhines, 544 U.S. at 277 (grant of stay abuses discretion if unexhausted claims are meritless).

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1 V. MOTION FOR DISCOVERY AND FOR PERSONNEL RECORDS

2 Petitioner seeks compelled disclosure of records documenting Officer Tennis' alleged
3 domestic violence and DUI history and any other citizen's complaint made against him. See ECF
4 No. 23 at 1-2. Even if the undersigned were not recommending dismissal, "[a] habeas petitioner,
5 unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary
6 course." Bracy v. Gramley, 520 U.S. 899, 904 (1997). In order to obtain leave to conduct
7 discovery, a petitioner must make specific factual allegations demonstrating that there is good
8 reason to believe that the petitioner may, through discovery, be able to garner sufficient evidence
9 to entitle him to relief. See id. at 908-09. Rule 6 of the Federal Rules Governing Section 2254
10 Cases, however, does not allow for fishing expeditions and unsupported speculative theories do
11 not warrant discovery. See id.; see also Harris v. Johnson, 81 F.3d 535, 540 (5th Cir. 1996).
12 Petitioner falls far short of satisfying the Rule 6 standard.

13 Federal habeas is generally not a forum for the development and presentation of evidence
14 in the first instance. See Cullen v. Pinholster, 563 U.S. 170, 186 (2011) ("Although state
15 prisoners may sometimes submit new evidence in federal court, AEDPA's statutory scheme is
16 designed to strongly discourage them from doing so."). Petitioner's discovery motion is moot in
17 light of the below recommendation for dismissal, and it would be denied on the merits for lack of
18 good cause even if the case were not subject to dismissal.

19 Accordingly, IT IS HEREBY ORDERED that petitioner's motion for discovery and for
20 personnel records (ECF No. 23) is DENIED.

21 IT IS FURTHER RECOMMENDED that:

- 22 1. Petitioner's request to stay this matter while he returns to state court to exhaust his
23 claims (see ECF No. 21 at 2) be DENIED;
- 24 2. Respondent's motion to dismiss (ECF No. 16) be GRANTED, and
- 25 3. The court DECLINE to issue the certificate of appealability referenced in 28 U.S.C. §
26 2253.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(1). Within twenty-one days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,
4 he shall also address whether a certificate of appealability should issue and, if so, why and as to
5 which issues. See 28 U.S.C. § 2253(c)(2). Any reply to the objections shall be served and filed
6 within seven days after service of the objections. The parties are advised that failure to file
7 objections within the specified time may waive the right to appeal the District Court’s order.
8 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 DATED: September 29, 2021

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11 ALLISON CLAIRE
12 UNITED STATES MAGISTRATE JUDGE
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