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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAFONZO R. TURNER,
Petitioner,
v.
WARDEN ASCUNCION,
Respondent.

No. 2:18-cv-1071 WBS AC P

ORDER

Petitioner is a state prisoner proceeding pro se and in forma pauperis with this habeas corpus action filed pursuant to 28 U.S.C. § 2254. This action was stayed on October 25, 2018, under Mena v. Long, 813 F.3d 907, 912 (9th Cir. 2016), and Rhines v. Weber, 544 U.S. 269, 278 (2005), for the purpose of permitting petitioner the opportunity to exhaust his federal claims in the state courts. See ECF Nos. 8, 9. Petitioner now moves to lift the stay in this action and proceed on his First Amended Petition (FAP). See ECF Nos. 12, 14.

Review of the FAP demonstrates that it is identical to the original petition with the exceptions of a new request for evidentiary hearing on page 1 and new date of signature on page 22. Cf. ECF Nos. 1 and 12. This problem may be attributable to the fact that petitioner filed his original federal petition before exhausting any of his claims in the California appellate courts. See ECF No. 8 at 1-2. However, because those claims have apparently now been exhausted, the operative petition in this court must reflect the current status of the claims. Petitioner’s attachment of his petition filed in the California Supreme Court (see ECF No. 12 et seq.),

1 particularly without a copy of that court's ruling, does not provide the necessary clarification.
2 Moreover, the pending motion to lift the stay does not clarify how each of petitioner's claims are
3 now ripe for decision before this court, stating only that his claims "have been denied in the
4 Superior, Appellate and California Supreme Court." ECF No. 14 at 2.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The pending motion to lift the stay in this action, ECF No. 14, is denied without
7 prejudice.

8 2. Petitioner shall, within thirty (30) days after the filing date of this order:


9 a. File an Amended Motion to Lift the Stay in this action, together with copies of
10 the relevant decisions by the California Court of Appeal and the California Supreme Court that
11 demonstrate exhaustion of petitioner's federal claims.¹

12 b. File a Second Amended Petition for Writ of Habeas Corpus pursuant to 28
13 U.S.C. § 2544, on the form provided herewith, that clearly identifies each of petitioner's state-
14 exhausted claims together with an accurate summary of the post-conviction proceedings
15 exhausting each claim; petitioner shall attach any relevant exhibits.²

16 c. Petitioner's Amended Motion and Second Amended Petition shall bear the case
17 number of this action and shall be filed only in the instant action.

18 3. The Clerk of Court is directed to send petitioner, together with a copy of this order, a
19 blank form for filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2544; the
20 Clerk is directed to enter the current case number on the first page of the form, and to provide one
21 additional set of pages 6-13 to accord petitioner adequate space to describe each of his eight
22 claims.

23 DATED: October 29, 2019

24 
25 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

26 _____
27 ¹ It appears petitioner has filed a copy of the Superior Court's pertinent decision. See ECF No.
28 12 at 68-72, 107-11 (duplicate copy).

² The court will move any other relevant attachments from petitioner's FAP to his Second Amended Petition.