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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN CALDWELL,
Petitioner,
v.
V. FOSS,
Respondent.

No. 2:19-cv-00679 TLN GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. The matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c).

On October 22, 2019, the undersigned issued Findings and Recommendations recommending dismissal due to petitioner’s failure to respond to court orders or take any action to prosecute this case. ECF No. 11. Prior, petitioner had neither filed an opposition, nor a statement of non-opposition, to respondent’s motion to dismiss within the requisite deadline, nor responded to the court’s order to show cause for failure to prosecute or comply with the court’s orders. Id. Petitioner has now filed a motion for extension of time to file objections to the undersigned’s Findings and Recommendations and to file a response to respondent’s motion to dismiss. ECF No. 12. Petitioner states his reasons for his request and failure to timely respond have been due to prison lock downs, or some type of modified lock down, due to an alleged gun in prison; power

1 outage; petitioner's transfers from different facilities; and his ignorance of the law. Id. The court
2 will afford petitioner an opportunity to respond to respondent's motion to dismiss. However,
3 petitioner need not file objections to the October 22, 2019 Findings and Recommendations as
4 these will be vacated. However, petitioner shall take care to comply with the court's deadlines
5 and orders or risk a recommendation that this action be dismissed for failure to prosecute and/or
6 to follow a court order pursuant to Federal Rules of Civil Procedure 41(b).

7 Petitioner has also requested the appointment of counsel. ECF No. 13. There currently
8 exists no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner,
9 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of
10 counsel at any stage of the case "if the interests of justice so require." See Rule 8(c), Fed. R.
11 Governing § 2254 Cases. In the present case, the court does not find that the interests of justice
12 would be served by the appointment of counsel at the present time.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. The Findings and Recommendations issued October 22, 2019 (ECF No. 11), is
15 VACATED;

16 2. Petitioner's motion for appointment of counsel (ECF No. 13) is denied without
17 prejudice to a renewal of the motion at a later stage of the proceedings;

18 3. Petitioner's request for an extension of time (ECF No. 12) is granted;

19 4. Petitioner shall file an opposition or statement of non-opposition to respondent's
20 motion to dismiss within thirty days from the date of this order;

21 5. Respondent reply, if any, shall be filed and served within fourteen days thereafter; and

22 6. Petitioner is further warned that failure to comply with this order will result in a
23 recommendation that this action be dismissed without prejudice.

24 Dated: November 28, 2019

25 /s/ Gregory G. Hollows
26 UNITED STATES MAGISTRATE JUDGE
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