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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RASHID D. DEARY-SMITH,
Petitioner,
v.
THERESA CISNEROS, Acting Warden,
Respondent.

No. 2:20-cv-00572 KJM GGH P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding with counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed a status report requesting a stay based on pending state court proceedings that reasonably has the potential to moot this action. ECF No. 27. The state issue involves the applicability of Senate Bill 1437 and amended Cal. Penal Code § 188 (abrogating the “natural and probable consequence” theory to a murder conviction). The issue is currently pending before the California Supreme Court, see People v. Medrano, 42 Cal. App. 5th 1001 (2019), review granted, 459 P.3d 1121 (2020), and several other similar cases set forth in the status report. It may well be that petitioner’s case could be affected by a ruling by the California Supreme Court applying Senate Bill 1437 to attempted murders based on the above “natural and probable consequence” theory, and a retrial or resentencing performed in state court. A stay also potentially

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1 avoids a protracted litigation in this court concerning a retrospective look at petitioner’s competency
2 to stand trial if petitioner is satisfied with a state court result.

3 Accordingly, IT IS HEREBY RECOMMENDED that:

- 4 1. Petitioner’s request for a stay (ECF No. 27) be GRANTED; and
- 5 2. This action should be stayed for one year. Petitioner should be required to submit status
6 reports at the 6 month and one-year mark, or immediately upon the final adjudication of the current
7 state court proceedings, whichever is earlier.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
10 after being served with these findings and recommendations, petitioner may file written objections
11 with the court. The document should be captioned “Objections to Magistrate Judge's Findings and
12 Recommendations.” Failure to file objections within the specified time may waive the right to appeal
13 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.1991).

14 Dated: June 4, 2021

15 /s/ Gregory G. Hollows
16 UNITED STATES MAGISTRATE JUDGE
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