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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREGORY C SMITH,

Petitioner,

No. C 11-00814 WHA

v.

GARY SWARTHOUT, Warden,

Defendant.

**ORDER REQUESTING
SUPPLEMENTAL BRIEFING**

Respondent is directed to file a supplemental brief addressing claim 5 of petitioner's habeas petition, filed on February 22, 2011. In the heading of claim 5, petitioner alleges that trial counsel was ineffective at sentencing, but the argument that follows addresses substantive challenges to petitioner's sentencing. In his answer, respondent does not address the merits of claim 5 on the grounds that it is unexhausted due to petitioner's failure to raise it in his state petition. Petitioner did however, raise substantive challenges to his sentencing in a petition for review presented to the Supreme Court of California. Lodged Exh. I. Liberally construed, claim 5 is exhausted. *See Peterson v. Lampert*, 319 F.3d 1153, 1159 (9th Cir. 2003) (counseled petitions should be read differently from pro se ones.)

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Respondent is hereby instructed to address the merits of the sentencing issues raised in claim 5 in a supplemental brief within sixty days of the date of this order. Petitioner shall have thirty days from the date of service of respondent's brief to file a response.

IT IS SO ORDERED.

Dated: April 12, 2012.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE