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

KLINTON MICHAEL KING,

Petitioner,

v.

L.S. MCEWEN, Warden,

Respondent.

No. C-12-5140 TEH (PR)

ORDER GRANTING MOTION TO
DISMISS UNEXHAUSTED CLAIMS;
ORDER TO SHOW CAUSE ON
EXHAUSTED CLAIM

Doc. #12

On October 3, 2012, Petitioner filed this pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. On November 6, 2012, the Court issued an order for Respondent to show cause (OSC) why a writ of habeas corpus should not be granted on three of the claims asserted in the Petition. Doc. #4. In the OSC, the Court indicated that, in lieu of an answer, Respondent may file a motion to dismiss on procedural grounds and, if Respondent filed such a motion, Petitioner had thirty days in which to file an opposition. Doc. #4 at 4.

On April 8, 2013, Respondent filed a motion to dismiss the petition for failure to exhaust state court remedies, arguing that only one of the claims the Court had found to be cognizable in its OSC had been exhausted. Respondent indicated that the unexhausted

1 claim alleged a violation of the ex post facto clause regarding
2 Petitioner's sentencing. On May 22, 2013, instead of filing an
3 opposition to the motion to dismiss, Petitioner filed a second
4 motion for appointment of counsel stating that he did not know how
5 to oppose Respondent's motion. Doc. #13. On June 13, 2013, the
6 Court denied the motion for appointment of counsel and explained to
7 Petitioner that he could oppose Respondent's motion if his claims
8 were exhausted and, if claims were unexhausted, he could request a
9 stay of his petition while he exhausted them in state court, or he
10 could inform the Court that he wished to dismiss his unexhausted
11 claims and proceed only on the ones that were exhausted. Doc. #14.

12 On July 11, 2013, Petitioner filed a letter with the Court
13 indicating that he wished to dismiss his unexhausted claims and
14 proceed with his exhausted claim. Doc. #15. The Court has examined
15 the state court record submitted by Respondent with his motion to
16 dismiss and is satisfied that it reflects that only Petitioner's ex
17 post facto claim was brought to the state courts.

18 For the foregoing reasons and for good cause shown,

19 1. Respondent's motion to dismiss is GRANTED. Doc. #12.
20 The unexhausted claims in the petition are dismissed. Petitioner's
21 exhausted claim based on a violation of the ex post facto clause
22 shall proceed.

23 2. Respondent shall file with the Court and serve on
24 Petitioner, within sixty-three (63) days of the issuance of this
25 Order, an Answer conforming in all respects to Rule 5 of the Rules
26 Governing Section 2254 Cases, showing cause why a writ of habeas
27 corpus should not be granted on the ex post facto claim. Respondent
28


1 shall file with the Answer and serve on Petitioner a copy of all
2 portions of the state trial record that have been transcribed
3 previously and that are relevant to a determination of the issues
4 presented by the Petition.

5 If Petitioner wishes to respond to the Answer, he shall do
6 so by filing a Traverse with the Court and serving it on Respondent
7 within twenty-eight (28) days of his receipt of the Answer.

8 3. Petitioner is reminded that all communications with
9 the Court must be served on Respondent by mailing a true copy of the
10 document to Respondent's counsel, Pamela K. Critchfield, California
11 State Attorney General's Office, 455 Golden Gate Avenue, Suite
12 11000, San Francisco, CA 94102-7004. Petitioner also must keep the
13 Court and Respondent informed of any change of address.

14
15 IT IS SO ORDERED.

16
17 DATED 07/17/2013



THELTON E. HENDERSON
United States District Judge

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