

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

TERRELL LOVE,

No. C 12-6068 JSW

Petitioner,

v.

**ORDER RE MOTION TO
DISMISS AND SETTING
BRIEFING SCHEDULE**

RICK HILL, Warden,

Respondent.

Petitioner Terrell Love, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss Claim V as procedurally defaulted and Claim IV as unexhausted. Petitioner sought and was granted an extension of time to file a response to the pending motion to dismiss but Petitioner failed to file a response. The Court issued an order to show cause as to why the challenged claims should not be dismissed with prejudice.

On November 12, 2013, the Court received Petitioner's response to the order to show cause. Although in his declaration, counsel for Petitioner references his offer to submit the matter, Petitioner briefly argues that the unexhausted Claim IV is sufficiently interrelated to have been fairly presented. Petitioner concedes that Claim V is procedurally barred.

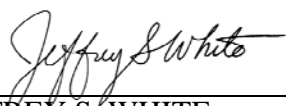
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court finds Claim IV to be unexhausted and Claim V to be procedurally barred. Accordingly, the motion to dismiss is GRANTED.

Petitioner has indicated that he intends to pursue the remaining claims in the Petition. Respondent is hereby ordered to file an answer within 30 days of this Order and Petitioner shall file a traverse within 30 days of the filing of Respondent's answer. Petitioner is again admonished that failure to file timely briefing in the future shall result in monetary and other sanctions, up to and including dismissal of this habeas petition.

IT IS SO ORDERED.

Dated: November 13, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE