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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRACY CONRAD SMITH,

Petitioner,

No. No. C 09-3764 PJH

v.

ORDER RE TRAVERSE

DARRAL ADAMS,

Respondent.

On August 17, 2009, petitioner Tracy Smith ("Smith") filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 3, 2010, the court dismissed Smith's petition with leave to amend, noting that it contained 106 claims, many of which did not appear cognizable and most of which were incomprehensible. In March 2010, Smith retained counsel, Hilda Scheib, after which the court subsequently afforded Smith, now represented by counsel, several extensions of time to file his amended petition. On June 21, 2010, Smith filed his amended petition, which raises three claims, including that he:

- (1) was deprived of his Sixth and Fourteenth Amendment rights to a jury determination regarding whether there was sufficient evidence to find him guilty of robbery;
- (2) was deprived of his right to due process and to present his case when the trial court refused to instruct on his lesser-included offenses to robbery; and
- (3) was denied his right to the effective assistance of counsel when counsel failed to

1 file a *Pitchess* and a *Romero* motion.

2 Smith asserted that he exhausted the first two claims on direct appeal in state court,
3 but conceded that the third claim is unexhausted. On June 22, 2010, Smith filed a habeas
4 petition with the California Court of Appeal in an effort to exhaust the third claim. On July
5 20, 2010, this court stayed these habeas proceedings to allow Smith to exhaust his claim in
6 state court.

7 On April 21, 2011, Smith notified the court that the California Supreme Court denied
8 his petition for review on March 30, 2011. The court reopened the case and required Smith
9 to supplement the record with (1) his habeas petitions as submitted to the California
10 appellate courts; (2) the California Court of Appeal's order denying habeas relief; and (3)
11 the California Supreme Court's order denying review, which he did on May 17, 2011. The
12 court then issued an order to show cause setting a briefing schedule for the state's
13 opposition and Smith's traverse. Smith subsequently filed two motions requesting
14 extensions of time to file his traverse, which the court granted. Pursuant to the September
15 27, 2011 order, Smith's traverse was due no later than October 26, 2011.

16 Because it appears that Smith intends to file a traverse and because, absent a
17 traverse, Smith will not have filed any comprehensible brief(s) with this court addressing the
18 merits of his three claims, the court will afford Smith one final opportunity to file his
19 traverse. Smith is ORDERED to file his traverse **no later than Friday, December 16,**
20 **2011.** If Smith fails to file the traverse, the court will deem the matter fully submitted as is.

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22 **IT IS SO ORDERED.**

23 Dated: December 9, 2011

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PHYLLIS J. HAMILTON
United States District Judge