

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

3 LARRY DARNELL THOMAS,

No. C 11-4709 CW (PR)

4                                    Petitioner,

ORDER DENYING  
PETITIONER'S MOTION TO  
DIRECT STATE COURT TO  
PROVIDE TRIAL  
TRANSCRIPTS

5                                    v.

6 MATTHEW CATE,

7                                    Respondent.

(Docket no. 5)

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10                                    Petitioner, a state prisoner, filed this pro se petition for  
11 a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging  
12 his state conviction. On October 26, 2011, the Court granted his  
13 motion to stay the petition while he exhausts his ineffective  
14 assistance of counsel claims in state court.

15                                    Now pending is Petitioner's motion asking this Court to  
16 direct the California superior court to provide him with a missing  
17 portion of his state trial transcripts or, alternatively, to grant  
18 summary judgment in his favor. Specifically, Petitioner states  
19 (1) that he was never provided with a transcript of the first  
20 portion (Volume I) of his state criminal and trial proceedings;  
21 (2) neither his trial nor appellate attorney have a copy of the  
22 transcript; (3) his former attorney has attempted to assist him in  
23 obtaining a copy of Volume I but has been unsuccessful; and  
24 (4) even the superior court does not have a copy of the  
25 transcript. Based on the above, Petitioner speculates that the  
26 first portion of the trial may not have been transcribed.

27                                    The Court must deny Petitioner's motion. Federal district  
28 courts are without power to issue mandamus to direct state courts,

1 state judicial officers, or other state officials in the  
2 performance of their duties. See Demos v. U.S. District Court,  
3 925 F.2d 1160, 1161-62 (9th Cir. 1991). Consequently, this Court  
4 cannot order the state court or any other state official to  
5 provide Petitioner with the missing volume of the transcript,  
6 assuming such portion of the trial was in fact transcribed. See  
7 In re Campbell, 264 F.3d 730, 731-32 (7th Cir. 2001) (denying  
8 petition for writ of mandamus that would order state trial court  
9 to give petitioner access to certain trial transcripts which he  
10 sought in preparation for filing state post-conviction petition;  
11 federal court may not, as a general rule, issue mandamus to a  
12 state judicial officer to control or interfere with state court  
13 litigation).

14 However, a state's failure to provide a full record of a  
15 trial may violate a defendant's due process rights and form the  
16 basis for federal habeas corpus relief. See Madera v. Risley, 885  
17 F.2d 646, 648 (9th Cir. 1989). Two criteria are relevant to this  
18 determination: (1) the value of the transcript to the defendant in  
19 connection with the appeal or trial for which it is sought; and  
20 (2) the availability of alternative devices that would fulfill the  
21 same functions as a transcript. See id. A federal habeas  
22 petitioner must establish prejudice from the lack of recordation  
23 to be entitled to habeas corpus relief. See id. at 649.

24 If Petitioner intends to assert a claim in the present  
25 petition for the violation of his right to due process based on  
26 his inability to obtain a portion of the trial transcript, he can  
27 do so only after he has exhausted state remedies as to that claim  
28 in state court and then moves to lift the stay and amend the

1 present petition to include all of his exhausted claims.

2 Accordingly, Petitioner's motion to have this Court direct  
3 the California superior court to provide him with his trial  
4 transcripts or, alternatively, to grant summary judgment in his  
5 favor, is DENIED.

6 This Order terminates Docket no. 5.

7 IT IS SO ORDERED.

8 Dated: 12/28/2012

  
CLAUDIA WILKEN  
United States District Judge

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