

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

E-FILED - 8/17/10

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

GREGORY WELKER,)	No. C 08-4551 RMW (PR)
)	
Petitioner,)	ORDER DENYING MOTION TO
)	COMPEL; GRANTING
vs.)	EXTENSION OF TIME TO FILE
)	SUPPLEMENTAL TRAVERSE
)	
JAMES HARTLEY, Warden,)	(Docket Nos. 24, 26)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court reviewed petitioner’s petition and on November 12, 2008, the court ordered respondent to show cause why the petition should not be granted. On June 1, 2009, respondent filed a supporting memorandum and an notice of lodging exhibits. Thereafter, petitioner stated that respondent never served him with any exhibits that were alleged to accompany respondent’s response to the order to show cause. Further, petitioner requested the respondent file and serve additional transcripts of hearings held in the state court. On May 11, 2010, the court granted petitioner’s request, observing that respondent had also neglected to file exhibits with this court.

On June 9, 2010, respondent acknowledged that he inadvertently did not file nor serve the court or petitioner with the answer or exhibits as he intended. Respondent stated that he would do so contemporaneously with the filing of his June 9, 2010 response. Regarding the

1 additional transcripts that petitioner requested, respondent stated that not only did he not have
2 access to those transcripts, but also that those hearing dates were never transcribed. In support
3 of respondent's assertion, he attached the docket sheet from petitioner's state appellate case
4 which indicated the hearing dates appellate counsel ordered for transcription.

5 On July 2, 2010, petitioner filed a motion to compel respondent to comply with providing
6 the additional transcripts. Additionally, petitioner requests that respondent provide a transcript
7 for one more hearing date. On July 7, 2010, respondent filed his opposition. Respondent argues
8 that the requested transcripts that have not already been provided to petitioner are irrelevant to
9 petitioner's federal claims. Moreover, respondent states that he has provided the entire state
10 court record as considered by the state courts in petitioner's underlying conviction and sentence.

11 In its order to show cause, this court found the following claims cognizable for federal
12 habeas relief: (1) counsel provided ineffective assistance for failing to object to factors
13 considered at sentencing to increase petitioner's sentence, and (2) counsel provided ineffective
14 assistance for failing to advise petitioner of the consequences of his conviction pursuant to
15 California's Sexually Violent Predator's Act. Respondent avers that he has filed all state
16 transcripts relevant to the claims raised in this federal action, including both the change of plea
17 and sentencing hearings.

18 Accordingly, the court DENIES petitioner's motion to compel. Upon further review,
19 should the court discover that additional state court transcripts or pleadings are necessary, it will
20 order the hearings transcribed and produced at that time.

21 Petitioner's motion for an enlargement of time to file an amended traverse is GRANTED.
22 Petitioner shall file any supplemental traverse within **thirty (30) days** of the filing date of this
23 order.

24 This order terminates docket numbers 24 and 26.

25 IT IS SO ORDERED.

26 DATED: 8/17/10

27 
RONALD M. WHYTE
United States District Judge