

1 success on the merits of his Petition; (2) whether irreparable injury will result if the stay is not
2 granted; (3) whether a stay would substantially harm the parties; and (4) whether granting a stay
3 would serve the public interest. In re Holladay, 331 F.3d 1169, 1176 (11th Cir. 2003). Here,
4 none of these factors favors issuance of a stay.

5 Petitioner has not demonstrated a likelihood of success on the merits of his Petition. He
6 alleges that his Sixth Amendment right to confront witnesses against him was denied when a
7 trial witness was permitted to testify as to the results of the blood alcohol analysis performed by
8 another analyst who did not testify. (Pet. at 6.) He contends that he has not presented this claim
9 to the state supreme court because that Court has indicted in a similar case that such a procedure
10 does not violate the federal Confrontation Clause.¹ (Pet. at 6, citing People v. Lopez, 55 Cal.4th
11 569 (2012), cert. denied, 133 S.Ct. 1501 (2013).) The Ninth Circuit has indicated, however, that
12 the Supreme Court has left open the question regarding whether someone other than the primary
13 author of such a report may be permitted to testify in place of the primary author. See Meras v.
14 Sisto, 676 F.3d 1184, 1192 (9th Cir. 2012), citing Bullcoming, 564 U.S. ___, 131 S.Ct. 2705,
15 1190-91 (2011), and id., 131 S.Ct. at 2722 (Sotomayor, J. concurring).

16 “As a condition for obtaining habeas corpus from a federal court, a state prisoner must
17 show that the state court’s ruling on the claim being presented in federal court was so lacking
18 in justification that there was an error well understood and comprehended in existing law beyond
19 any possibility for fairminded disagreement.” Harrington v. Richter, 562 U.S. ___, 131 S.Ct.
20 770, 786-87 (2011). The Supreme Court has stated that “[i]f this standard is difficult to meet,
21 that is because it was meant to be . . . [as it] preserves authority to issue the writ in cases where
22 there is no possibility fairminded jurists could disagree that the state court decision conflicts with
23 this Court’s precedents.” Id. at 786 (“Section 2254(d) reflects the view that habeas corpus is a
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25 ¹ Petitioner alleges that he has exhausted his state court remedies with respect to this claim
26 because he does not have the right under California procedure to appeal his misdemeanor conviction to
27 the state supreme court, and because filing a habeas petition in the state supreme court would be futile
28 because the state supreme court in Lopez has foreclosed relief. (Pet. at 5-6.) The Court makes no
determination regarding exhaustion at this time, and Respondent is free to argue that Petitioner is
required to seek relief in the state supreme court in order to fully exhaust state court remedies. See e.g.
Engle v. Issac, 456 U.S. 107, 130 (1982) (rejecting futility argument because state courts may reconsider
previous holdings).

1 guard against extreme malfunctions in the state criminal justice systems, not a substitute for
2 ordinary error correction through appeal.”) (internal quotation marks omitted).

3 Although Petitioner may eventually be able to satisfy that standard in this case after
4 briefing, an issue this Court does not reach at this time, he has not shown, at this stage in the
5 proceedings, that there is a reasonable likelihood of success on the merits of his claim. Neither
6 has Petitioner shown irreparable injury or substantial harm in serving the remaining 72 hours of
7 his sentence imposed on a conviction which was stayed pending appeal and which has been
8 upheld on appeal, or how staying such a sentence would serve the public interest.

9 Petitioner’s Motion for a Stay is **DENIED**. A scheduling order will issue in the matter
10 forthwith.

11 **IT IS SO ORDERED.**

12 DATED: 12/10/13



13 William Q. Hayes
14 United States District Judge

14 Copies to: ALL PARTIES

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