UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY ALLEN HARMS,

Petitioner,

v.

EDWARD SILVA,

Respondent.

No. 2:25-cv-01048-DC-CSK (HC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS

(Doc. No. 5)

Petitioner Gregory Allen Harms is a state prisoner proceeding with counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition raises three claims for relief. (Doc. No. 1 at 2–3.) In claim one, Petitioner alleges ineffective assistance of his trial counsel. (*Id.* at 2.) In claim two, which contains three subparts that Petitioner refers to as "subclaims," Petitioner alleges jury instruction errors (subclaims A, C) and alleges the trial court committed a sentencing error (subclaim B). (*Id.* at 2- 3.) In claim three, Petitioner alleges that he was denied his right to an impartial jury. (*Id.* at 3.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 1, 2025, Petitioner filed a motion for a stay under *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002), overruled on other grounds by *Robbins v. Carey*, 481 F.3d 1143 (9th Cir. 2007) to exhaust claims one, three, and subclaim C of claim two. (Doc. No. 4.) On May 6, 2025, the assigned magistrate judge issued findings and recommendations recommending that Petitioner's

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motion under *Kelly* be granted and that this action be stayed while Petitioner exhausts state court remedies with respect to claims one, three, and subclaim C of claim two. (Doc. No. 5.) The findings and recommendations were served on Petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days from the date of service. (*Id*. at 3–4.) To date, no objections to the findings and recommendations have been filed, and the time in which to do so has now passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly,

1. The findings and recommendations issued on May 6, 2025 (Doc. No. 5) are ADOPTED in full;
2. Petitioner's motion for a stay pending exhaustion of state court remedies under *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002) (Doc. No. 2) is GRANTED;
3. Petitioner's claims one, three, and subclaim C of claim two are dismissed without prejudice as unexhausted;
4. This case is STAYED and held in abeyance pending exhaustion of state court remedies;
5. Petitioner is directed to file a status report within ninety (90) days of the date of entry of this order, and every 90 days thereafter, advising the court of what steps he has taken to exhaust his claims in state court;
6. Within thirty (30) days after the state court issues a final order resolving the unexhausted claims, Petitioner shall file a motion to lift the stay and, if he wishes to pursue newly exhausted claims in this federal habeas action, Petitioner shall also file a first amended federal petition setting forth all exhausted claims; and

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7. This action is referred back to the magistrate judge for proceedings consistent with this order.

IT IS SO ORDERED.

Dated: **July 17, 2025**

Dena Coggins
United States District Judge