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

WENDELL JOSEPH MAGRAFF,

Petitioner,

No. CIV S-07-1750 LKK KJM P

vs.

SOLANO COUNTY SUPERIOR
COURT, et al.,

Respondents.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed an amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Examination of the amended petition shows that it challenges the same conviction that petitioner puts at issue in another, previously filed action still pending before the court, Case No. CIV S-07-1121 LKK KJM P. Indeed, the court recently found this action to be related to the prior action and reassigned this case to the same district judge and magistrate judge assigned to the prior action, pursuant to Local Rule 190(d). See Docket No. 8.

In Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008), the Ninth Circuit held that a new pro se habeas petition filed before the final adjudication of a prior petition should be construed as a motion to amend the pending petition if both petitions attack the same underlying

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1 decision. The district court then has discretion to decide whether the motion to amend the
2 petition should be granted. Id.

3 In light of Woods, the court construes the amended petition filed in this action as
4 a motion to amend the petition pending in the earlier filed action. The court will direct the Clerk
5 of Court to re-file petitioner's amended petition of February 17, 2010, and documents related to
6 the amended petition, as a motion to amend the petition in CIV S-07-1121 LKK KJM P. The
7 court will issue an order on that motion forthwith. The court will recommend that CIV S-07-
8 1750 LKK KJM P be closed. See Barnes v. Board of Prison Terms, 2008 WL 5099650, *1
9 (E.D.Cal. Dec. 1, 2008).

10 IT IS HEREBY ORDERED that the Clerk of Court file a copy of petitioner's
11 February 17, 2010 amended petition (docket no. 6), as a motion to amend the petition in Case
12 No. CIV S-07-1121 LKK KJM P. The Clerk of the Court also shall file a copy of document
13 numbers 9 and 10 in Case No. CIV S-07-1121 LKK KJM P.

14 IT IS HEREBY RECOMMENDED that this case be closed.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
17 one days after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
20 shall be served and filed within fourteen days after service of the objections. The parties are
21 advised that failure to file objections within the specified time may waive the right to appeal the
22 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: July 2, 2010.

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26 magr1750.ord



U.S. MAGISTRATE JUDGE