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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL GONZALES,)	Case No.: 1:05-cv-01543-LJO-JLT HC
)	
Petitioner,)	ORDER GRANTING PETITIONER’S
)	SECOND MOTION FOR EXTENSION OF
v.)	TIME TO FILE AMENDED PETITION (Doc.
)	38)
)	
SHRIBER, Warden,)	THIRTY DAY DEADLINE
)	
Respondent.)	
_____)	

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The instant petition was filed on December 2, 2005. (Doc. 1). On April 3, 2007, the Court ordered Petitioner to file an amended petition. (Doc. 21). In that order, the Court noted that Petitioner had failed to explain his grounds for relief on the form petition and that the 215-page attachment to the petition was so confusing that the Court could not discern the nature and number of claims Petitioner sought to raise. (Id.). Without knowing the number and nature of claims being raised by Petitioner, the Court could not proceed with the case. The order gave Petitioner thirty days within which to file an amended petition. Petitioner requested, and received, several extensions of time within which to file his amended petition, but then never filed an amended petition as ordered by this Court. (Docs. 22 & 23). After the last extension of time was granted, the amended petition was due on July 9,

1 2007.

2 Instead, on July 6, 2007, three days before the amended petition was due, rather than
3 simply filing the amended petition, Petitioner chose instead to appeal the Court's non-appealable
4 order to the Ninth Circuit. (Doc. 25). This Court denied a certificate of appealability because the
5 order was interlocutory and non-appealable. (Doc. 26). The case languished in the Ninth Circuit
6 for over three years. On August 10, 2010, the Ninth Circuit properly dismissed the appeal due to
7 its lack of jurisdiction over a non-appealable order. (Doc. 33).

8 At that point, the proceedings were precisely where they had been on April 3, 2007, when
9 the Court first ordered Petitioner to file his amended petition. Cognizant that the case was now
10 almost five years old and that both the interests of the parties and the interests of justice demand
11 that habeas corpus cases be decided in a prompt and expeditious manner, the Court, on August
12 11, 2010, ordered Petitioner to file the amended petition within thirty days. (Doc. 34). On
13 September 13, 2010, rather than complying with the Court's order to amend, Petitioner requested
14 additional time. (Doc. 36). The Court, in a lengthy and detailed order, grudgingly granted
15 Petitioner an additional thirty days in which to file his amended petition. (Doc. 37). On
16 September 28, 2010, Petitioner filed a second motion for extension of time, complaining that he
17 requires more time because the pens issued by the prison staff do not contain sufficient ink for
18 Petitioner to complete his amended petition. (Doc. 38).

19 As the Court pointed out in its previous order, Petitioner has had several years to properly
20 "organize" his amended petition, to access and do research in the prison law library, and, if
21 needed, to accumulate sufficient pens and other writing materials to successfully complete his
22 amended petition. Nevertheless, it has become apparent that, during those years, Petitioner has
23 done absolutely nothing to prepare for further litigation in this case.

24 As the Court previously noted, it is Petitioner who commenced this litigation and it is
25 Petitioner who now has the obligation to move these proceedings forward. If he chooses not to
26 do so, the Court will recommend termination of the case and dismissal of the petition for failure
27 to prosecute. Prisoner cases comprise almost two-thirds of this Court's docket and the Court has
28 literally hundreds of other prisoner cases to deal with on a daily basis. The instant case is the

1 oldest case on the Court's docket by a matter of years. If Petitioner is unwilling or unprepared to
2 proceed in a timely manner, he should file a voluntary motion to dismiss his petition in order to
3 permit the Court to use its limited resources on other cases where the petitioners are prepared to
4 comply with the requirements of litigation.

5 Nevertheless, in what is perhaps an excess of caution, the Court will afford Petitioner *one*
6 *final extension* of time of thirty days within which to file his amended petition. ***No further***
7 ***extensions of time will be granted.*** **If Petitioner fails to file his amended petition within the**
8 **time prescribed by the Court, the Court will recommend dismissal of the petition.**

9 **ORDER**

10 Accordingly, it is HEREBY ORDERED:

- 11 1. Petitioner's motion for extension of time to file his Amended Petition (Doc. 38),
12 is GRANTED. Petitioner has thirty (30) days from the date of service of this
13 order within which to file his Amended Petition. ***No further extensions of time***
14 ***will be granted.*** ***Petitioner's failure to comply with this order will result in the***
15 ***issuance of a Recommendation to dismiss the petition.***

16
17 IT IS SO ORDERED.

18 Dated: September 30, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE