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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEVIN ANTHONY JAMES, JR.,)	1:08-cv-01325-TAG HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATIONS
)	TO GRANT PETITIONER’S MOTION TO
v.)	DISMISS PETITION FOR WRIT OF HABEAS
)	CORPUS (Doc. 10)
)	
WARDEN SMITH,)	ORDER DIRECTING THAT OBJECTIONS BE
)	FILED WITHIN TWENTY DAYS
Respondent.)	
)	ORDER DIRECTING CLERK OF COURT TO
)	ASSIGN DISTRICT JUDGE TO CASE

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

PROCEDURAL HISTORY

Petitioner filed the instant federal petition on September 8, 2008, challenging his conviction in the Superior Court for the District of Columbia on March 5, 1999 for unspecified crimes and his two consecutive fifteen years to life sentences. (Doc. 1, p. 3). Petitioner appealed his conviction to the District of Columbia Court of Appeals, which affirmed the conviction. (Id. at p. 2). In his petition, Petitioner indicates that he appealed his conviction to the District of Columbia Superior Court, but that the appeal was denied on February 26, 2004. (Id. at p. 4). On March 29, 2005, the D.C. Court of Appeals denied his appeal. (Id. at p. 3).

On December 19, 2008, the Court issued an order to show cause why the petition should not be dismissed for lack of jurisdiction because the District of Columbia Court Reform and Criminal Procedure Act entirely divested the federal courts of jurisdiction to hear habeas corpus

1 petitions filed by prisoners challenging convictions from the District of Columbia who had
2 remedies available to them pursuant to D.C. Code § 23-110. (Doc. 9). On January 26, 2009,
3 Petitioner filed a motion to withdraw his petition. (Doc. 10).

4 **DISCUSSION**

5 Subject to other provisions of law, a Petitioner may voluntarily dismiss an action without
6 leave of court before service by the adverse party of an answer or motion for summary judgment.
7 Fed. R. Civ. P. 41(a). Otherwise, an action shall not be dismissed except upon order of the court
8 and upon such terms and conditions as the court deems proper. Id. Here, no answer has been
9 served or filed. Therefore, Petitioner may voluntarily dismiss his petition without leave of court.

10 **ORDER**

11 The Court HEREBY DIRECTS the Clerk of the Court to assign a District Judge to this
12 case.

13 **RECOMMENDATIONS**

14 Based on the foregoing, the Court recommends that:

- 15
- 16 1. Petitioner’s motion for voluntary dismissal (Doc. 10), be GRANTED; and
 - 17 2. The petition for writ of habeas corpus (Doc. 1), be DISMISSED.
- 18

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of
21 the Local Rules of Practice for the United States District Court, Eastern District of California.
22 Within twenty (20) days after being served with a copy of these findings and recommendations,
23 any party may file written objections with the Court and serve a copy on all parties. Such a
24 document should be captioned “Objections to Magistrate Judge’s Findings and
25 Recommendations.” Replies to the objections shall be served and filed within ten (10) court days
26 (plus three days if served by mail) after service of the objections. The District Judge will then
27 review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are

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1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Judge's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3
4 IT IS SO ORDERED.

5
6 Dated: **April 2, 2009**

/s/ Theresa A. Goldner
UNITED STATES MAGISTRATE JUDGE