UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAMON MARCELL ROGERS, Petitioner, v. ANTHONY HEDGPETH, Warden, Respondent.	1:09-CV-00111 GSA HC ORDER DENYING PETITIONER'S MOTION TO SUBSTITUTE NAME OF RESPONDENT ORDER DIRECTING CLERK OF COURT TO CORRECT NAME OF RESPONDENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On January 13, 2009, Petitioner filed the instant federal habeas petition naming as Respondent, "Mr. Hedgpeta." On February 2, 2009, Petitioner filed a motion to substitute the respondent in this matter. He acknowledges that the named respondent is the warden at his institution, but he states the respondent should be a victim or witness from his underlying state case.

A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir.

1992); see also, Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Therefore, Petitioner did name the proper respondent in this matter in the original petition. The victim or witness to the crime are not appropriate respondents. The Court further notes that Respondent's name is misspelled and should be "Hedgpeth" rather than "Hedgpeta."

ORDER

Accordingly, IT IS HEREBY ORDERED:

1) Petitioner's motion to substitute the named respondent is DENIED; and

2) The Clerk of Court is DIRECTED to correct the name of Respondent to read "ANTHONY HEDGPETH," instead of "MR. HEDGPETA."

IT IS SO ORDERED.

Dated: February 10, 2009 **/s/ Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE