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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CRAIG ALLEN WARD,)	1:10-cv-0633-OWW-SKO-HC
)	
Petitioner,	)	ORDER DENYING PETITIONER'S
	)	"FOURTH" MOTION TO PROCEED IN
v.	)	FORMA PAUPERIS (DOC. 18)
)	
ACTING WARDEN M. C. EVANS,	)	ORDER CLARIFYING DUE DATE FOR
	)	PAYMENT OF THE \$5.00 FILING FEE
Respondent.	)	Deadline for Payment of Filing
	)	Fee:
	)	NO LATER THAN FOURTEEN (14) DAYS
	)	AFTER THE DATE OF SERVICE OF THIS
	)	ORDER

ORDER INFORMING PETITIONER THAT
DISMISSAL WILL RESULT IF THE
FILING FEE IS NOT PAID

Plaintiff 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. Pending before the Court is Petitioner's "Fourth" motion to proceed in forma pauperis (doc. 18), filed on July 2, 2010.

I. Background

The petition was transferred to this Court on April 12, 2010, from the District of Northern California, action no. CV 10-662-JF-(PR) (doc. 9), with an application to proceed in forma

1 pauperis (doc. 5) pending at the time of the transfer.
2 Petitioner filed another motion to proceed in forma pauperis on
3 April 15, 2010 (doc. 11), which was denied by this Court by order
4 filed on May 5, 1020, because the documentation attached to
5 Petitioner's application demonstrated that Petitioner was able to
6 afford the costs of the action. (Doc. 15.) The order was served
7 by mail on Petitioner on May 5, 2010. It specifically stated:

8 Petitioner is ORDERED to pay the five dollar (\$5.00)
9 filing fee within thirty (30) days of the date of service
10 of this order. Failure to follow this order may result
11 in a recommendation that the Petition be dismissed
12 pursuant to Local Rule 11-110.

11 (Id.)

12 By order filed May 24, 2010 (doc. 19), the Court denied a
13 renewed motion to proceed in forma pauperis (doc. 16) that had
14 been filed on May 17, 2010, and reminded Petitioner that the
15 filing fee was due to be paid on June 8, 2010. When the filing
16 fee was not paid, findings and recommendations were filed by the
17 Magistrate Judge to dismiss the petition.

18 It then was discovered that the Clerk failed to serve on
19 Petitioner the order denying Petitioner's renewed motion. The
20 findings and recommendations were vacated, and the clerk served
21 on Petitioner the order denying the renewed motion to proceed in
22 forma pauperis on July 28, 2010.

23 II. Clarification of Due Date for Filing Fee

24 The order vacating the findings and recommendations directed
25 that Petitioner be served with the order denying Petitioner's
26 renewed motion. The order denying Petitioner's renewed motion in
27 turn reminded Petitioner that pursuant to the Court's previous
28 order of May 5, 2010 (doc. 15: 21-22), the deadline for payment

1 of the filing fee was thirty days after service of the Court's
2 order of May 5. The docket reflects that the order of May 5,
3 2010, was served on Petitioner at the address listed as
4 Petitioner's on the docket, and the order was not returned in the
5 mail.

6 Independently of any clerical error, Petitioner failed to
7 pay the filing fee or seek an extension of time within the
8 thirty-day period after May 5, 2010. Petitioner did not pay the
9 filing fee, and Petitioner's payment of the filing fee is thus
10 long overdue.

11 However, in light of foregoing history, the Court CLARIFIES
12 its previous orders and INFORMS Petitioner that unless the filing
13 fee is paid no later than fourteen (14) days after the date of
14 service of this order, the action will be dismissed.

15 III. "Fourth" Motion to Proceed in Forma Pauperis

16 In a motion filed on July 2, 2010, Petitioner again asserts
17 that a case in the Northern District, case C-10-0659-WHA (PR),
18 was transferred here and assigned case number 1:10 cv 00633-OWW-
19 SKO, the number of the present proceeding. Petitioner asserts
20 that in that case, an application to proceed in forma pauperis
21 was granted in the Northern District. Attached to the motion is
22 an order of transfer in Northern District case number C-10-0662-
23 RS-(PR), which effects the transfer of that action to this Court,
24 where it was given the case number of the matter before the
25 Court, namely, 1:10-cv-00633-OWW-SKO-HC. (Doc. 18 pp. 13-14.)
26 Also attached to the renewed motion is an order in the other
27 Northern District case, case number C-10-659-WHA-(PR), granting
28 leave to proceed in forma pauperis. (Doc. 18, 13.) That order was

1 dated May 5, 2010.

2 It thus appears that Petitioner has submitted an order from
3 a different proceeding in the Northern District--i.e., one which
4 did not become the present proceeding upon transfer--in which a
5 court exercised its discretion to grant an application to proceed
6 in forma pauperis.

7 Title 28 U.S.C. § 1915(a)(1) provides that any court of the
8 United States may authorize the commencement, prosecution of
9 defense of any civil or criminal suit, action, proceeding, or any
10 appeal therein, without prepayment of fees or security therefor,
11 by a person who submits an affidavit that includes a statement of
12 all assets the person possesses and that the person is unable to
13 pay such fees or give security therefor. Id.; Floyd v. United
14 States Postal Service, 105 F.3d 274, 275-77 (6th Cir. 1997),
15 modified on other grounds in Callihan v. Schneider, 178 F.3d 800,
16 801 (6th Cir. 1999). Section 1915(a) does not require that the
17 litigant be destitute; rather, a party must not be required to
18 choose either to abandon a potentially meritorious claim or to
19 forego the necessities of life. Potnick v. Eastern State
20 Hospital, 701 F.2d 243, 244 (2nd Cir. 1983) (citing Adkins v.
21 E.I. DuPont de Nemours & Co., Inc., 335 U.S. 331, 339, (1948)).

22 In the motion before the Court, Petitioner has not
23 demonstrated that he is required to choose to abandon a
24 potentially meritorious claim or forego the necessities of life.
25 Petitioner has not shown that he is unable to afford the costs of
26 this action.

27 If Petitioner's motion is considered a motion for
28 reconsideration pursuant to Federal Rule of Civil Procedure, Rule

1 59(e), see, United States v. Westlands Water Dist., 134 F.Supp.2d
2 1111, 1130 (E.D. Cal. 2001), then Petitioner has not demonstrated
3 grounds sufficient to warrant relief pursuant to Fed. R. Civ. P.
4 59(e), which is appropriate when there are highly unusual
5 circumstances, the district court is presented with newly
6 discovered evidence, the district court committed clear error, or
7 a change in controlling law intervenes. School Dist. No. 1J,
8 Multnomah County, Oregon v. AcandS, Inc., 5 F.3d 1255, 1262 (9th
9 Cir. 1993).

10 Federal Rule of Civil Procedure 60(b), which governs the
11 reconsideration of final orders of the district court, permits a
12 district court to relieve a party from a final order or judgment
13 on grounds including but not limited to 1) mistake, inadvertence,
14 surprise, or excusable neglect; 2) newly discovered evidence; 3)
15 fraud, misrepresentation, or misconduct by an opposing party; or
16 4) any other reason justifying relief from the operation of the
17 judgment. Fed. R. Civ. P. 60(b) generally applies to habeas
18 corpus proceedings. See, Gonzalez v. Crosby, 545 U.S. 524, 530-
19 36 (2005). Relief may be granted in the event of an intervening
20 change in controlling law, the availability of new evidence or an
21 expanded factual record, or the need to correct a clear error or
22 prevent manifest injustice. Kern-Tulare Water Dist. v. City of
23 Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), aff'd in part
24 and rev'd in part on other grounds, 828 F.2d 514 (9th Cir. 1987).
25 A party seeking reconsideration must show more than a
26 disagreement with the Court's decision and offer more than a
27 restatement of the cases and arguments considered by the Court
28 before rendering the original decision. United States v.

1 Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001).
2 Motions to reconsider pursuant to Rule 60(b)(1) are committed to
3 the discretion of the trial court, Rodgers v. Watt, 722 F.2d 456,
4 460 (9th Cir. 1983).

5 If Petitioner's renewed motion is considered to be an
6 application pursuant to Fed. R. Civ. P. 60(b), then Petitioner
7 has failed to demonstrate any grounds for relief.

8 Further, Petitioner has failed to comply with Local Rule
9 230(j), which governs the procedures to be followed with respect
10 to motions for reconsideration.

11 IV. Disposition

12 Accordingly, it is ORDERED that

13 1) Petitioner's "Fourth" motion to proceed in forma pauperis
14 is DENIED; and

15 2) The filing fee IS DUE no later than fourteen (14) days
16 after the date of service of this order; and

17 3) Petitioner IS INFORMED that if the filing fee is not
18 timely paid, then the action WILL BE DISMISSED. IT IS SO ORDERED.

19 **Dated: August 20, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE