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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SALVADOR CARRILLO LEON,

Petitioner,

v.

P. BRAZELTON,

Respondent.

Case No. 1:13-cv-00768-AWI-SAB-HC
Case No. 1:13-cv-00922-GSA-HC

ORDER GRANTING RESPONDENT’S
MOTION TO CONSOLIDATE CASES

ORDER DIRECTING CLERK OF COURT
TO CONSOLIDATE CASES

ORDER DIRECTING CLERK OF COURT
TO FILE ECF #12 FROM CASE 1:13-cv-
00922-GSA-HC INTO CASE 1:13-cv-00768-
AWI-SAB-HC AS MOTION TO AMEND

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

On May 1, 2013, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Central District of California. The petition was transferred to this Court on May 22, 2013, and assigned Case No. 1:13-cv-00768-AWI-SAB-HC. The petition challenges Petitioner’s 2010 conviction for second degree murder and vehicular manslaughter sustained in Tulare County Superior Court. On August 23, 2013, Respondent filed an answer to the petition.

On May 24, 2013, Petitioner filed a second petition for writ of habeas corpus in the United States District Court for the Central District of California. The petition was transferred to this Court on June 14, 2013, and assigned Case No. 1:13-cv-00922-GSA-HC. The Magistrate

1 Judge dismissed the petition and granted Petitioner leave to file an amended petition. On August
2 19, 2013, Petitioner filed a first amended petition. The amended petition also challenges
3 Petitioner’s 2010 conviction out of Tulare County Superior Court. In the amended petition,
4 Petitioner answered “No” to Question #14, which asked whether Petitioner had “any petition or
5 appeal now pending in any court, either state or federal, as to the judgment under attack.” As
6 evidenced by the above filings, the answer was a misrepresentation.

7 On September 17, 2013, Respondent alerted the Court to the fact that the two petitions
8 challenge the same conviction. Respondent moved to consolidate the two cases.

9 DISCUSSION

10 Rule 42(a) of the Federal Rules of Civil Procedure provides:

11 Consolidation. If actions before the court involve a common question of law or
12 fact, the court may:

- 13 (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

14 Local Rule 190(d) states:

15 If, in the same matter in this Court, the petitioner has previously filed a petition
16 for relief or for a stay of enforcement, the new petition shall be assigned to the
Judge or Magistrate Judge who considered the prior matter.

17 Both cases filed by Petitioner challenge the same conviction and raise similar claims.
18 Accordingly, this Court will direct the Clerk of the Court to consolidate these cases. Insofar as
19 Case No. 1:13-cv-00768-AWI-SAB-HC was the first action Petitioner filed with the Court, it
20 will be considered the lead case. The Clerk of the Court will be directed to administratively
21 close Case No. 1:13-cv-00922-GSA-HC.

22 “[W]here a new pro se petition is filed before the adjudication of a prior petition is
23 complete, the new petition should be construed as a motion to amend the pending petition rather
24 than as a successive application.” Woods v. Carey, 525 F.3d 886, 888-890 (9th Cir. 2008). But
25 where the claims have already be denied in the previously-filed action, the new petition is
26 construed as a second or successive petition under 28 U.S.C. § 2244(b). Beaty v. Schriro, 554
27 F.3d 780, 782-83 (9th Cir.2009).

28 In this case, the petition filed in Case No. 1:13-cv-00768-AWI-SAB-HC had not been

1 adjudicated when Petitioner commenced his second action. Therefore, the Court must consider
2 Petitioner's First Amended Petition as a motion to amend the previously-filed petition.

3 **ORDER**

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1) Respondent's motion to consolidate cases is GRANTED;
- 6 2) The Clerk of Court is DIRECTED to CONSOLIDATE Case No. 1:13-cv-00768-AWI-
7 SAB-HC with Case No. 1:13-cv-00922-GSA-HC;
- 8 3) The Clerk of Court is DIRECTED to FILE the First Amended Petition (ECF No. 12)
9 from Case No. 1:13-cv-00922-GSA-HC into Case No. 1:13-cv-00768-AWI-SAB-HC;
- 10 4) The Clerk of Court is DIRECTED to ADMINISTRATIVELY CLOSE Case No. 1:13-
11 cv-00922-GSA-HC; and
- 12 5) The parties are INSTRUCTED that all future pleadings should be identified by the
13 case number of the lead case: 1:13-cv-00768-AWI-SAB-HC.

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15
16 IT IS SO ORDERED.

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18 Dated: September 23, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE