

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Petitioner,

v.

GIPSON,

Respondent.

Case No. 1:14-cv-00509-LJO-SAB-HC
Case No. 1:13-cv-01758-LJO-JLT-HC

ORDER DIRECTING CLERK OF COURT
TO FILE PETITION [ECF #1] FROM CASE
1:14-cv-00509-LJO-SAB-HC IN CASE 1:13-
cv-01758-LJO-JLT-HC AS A MOTION TO
AMEND

ORDER ADMINISTRATIVELY CLOSING
CASE 1:14-cv-00509-LJO-SAB-HC

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

On October 23, 2013, Petitioner filed a petition for writ of habeas corpus in this Court. The case was assigned Case No. 1:13-cv-01758-LJO-JLT-HC. He then filed a first amended petition on December 6, 2013. The petition challenges Petitioner’s 2011 conviction in Kern County Superior Court for kidnaping, carjacking, armed robbery, assault with a firearm, terrorist threats, and multiple enhancements. The petition is currently pending review by the Court.

On April 11, 2014, Petitioner filed a new petition for writ of habeas corpus in this Court. The case was assigned Case No. 1:14-cv-00509-LJO-SAB-HC. The petition also challenges Petitioner’s 2011 conviction out of Kern County Superior Court.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

DISCUSSION

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

In this case, the petition filed in Case No. 1:13-cv-01758-LJO-JLT-HC had not been adjudicated when Petitioner commenced his second action. Therefore, the Court must consider the petition filed in Case No. 1:14-cv-00509-LJO-SAB-HC as a motion to amend the previously-filed petition.

II.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

- 1) The Clerk of Court is DIRECTED to FILE the Petition (ECF No. 1) from Case No. 1:14-cv-00509-LJO-SAB-HC in Case No. 1:13-cv-01758-LJO-JLT-HC as a Motion to Amend;
- 2) The Clerk of Court is DIRECTED to ADMINISTRATIVELY CLOSE Case No. 1:14-cv-00509-LJO-SAB-HC; and
- 3) Petitioner is INSTRUCTED that all future pleadings should be identified by the case number: 1:13-cv-01758-LJO-JLT-HC.

IT IS SO ORDERED.

Dated: April 23, 2014


UNITED STATES MAGISTRATE JUDGE