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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROGER WAYNE ROBERTSON,
Petitioner,
v.
MARIPOSA COUNTY COURT,
Respondent.

Case No. 1:13-cv-02019-GSA-HC
Case No. 1:13-cv-01775-SMS-HC

ORDER DIRECTING CLERK OF COURT
TO FILE PETITION [ECF #1] FROM CASE
1:13-cv-02019-GSA-HC IN CASE 1:13-cv-
01775-SAB-HC AS A MOTION TO AMEND

ORDER ADMINISTRATIVELY CLOSING
CASE 1:13-cv-02019-GSA-HC

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

On November 1, 2013, Petitioner filed a petition for writ of habeas corpus in this Court. The case was assigned Case No. 1:13-cv-01775-SMS-HC. The petition challenges Petitioner's 2010 conviction for kidnap and rape sustained in Mariposa County Superior Court. On November 5, 2013, he filed a First Amended Petition. On December 12, 2013, Magistrate Judge Sandra M. Snyder dismissed the petition and granted Petitioner leave to file an amended petition. On December 26, 2013, Petitioner filed a Second Amended Petition.

On December 9, 2013, Petitioner filed a second petition for writ of habeas corpus in this Court. The case was assigned Case No. 1:13-cv-02019-GSA-HC. The petition also challenges

1 Petitioner's 2010 conviction out of Mariposa County Superior Court.

2 **DISCUSSION**

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

9 In this case, the petition filed in Case No. 1:13-cv-01775-SMS-HC had not been
10 adjudicated when Petitioner commenced his second action. Therefore, the Court must consider
11 the petition filed in Case No. 1:13-cv-02019-GSA-HC as a motion to amend the previously-filed
12 petition.

13 **ORDER**

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1) The Clerk of Court is DIRECTED to FILE the Petition (ECF No. 1) from Case No.
16 1:13-cv-02019-GSA-HC in Case No. 1:13-cv-01775-SMS-HC as a Motion to Amend;
- 17 2) The Clerk of Court is DIRECTED to ADMINISTRATIVELY CLOSE Case No. 1:13-
18 cv-02019-GSA-HC; and
- 19 3) Petitioner is INSTRUCTED that all future pleadings should be identified by the case
20 number: 1:13-cv-01775-SMS-HC.

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23 IT IS SO ORDERED.

24 Dated: January 6, 2014

25 /s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE