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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

UTAH CHARLES KOON,)	Case No.: 1:14-cv-00241-JLT
)	
Petitioner,)	ORDER CONSTRUING PETITION AS MOTION
)	TO AMEND IN CASE NO. 1:11-cv-00131-BAM
v.)	(Doc. 1)
)	
B. GOWER, Warden,)	ORDER DIRECTING CLERK OF COURT TO
)	DOCKET THIS PETITION AS A MOTION TO
Respondent.)	AMEND IN CASE NO. 1:11-cv-131-BAM
)	
)	ORDER DIRECTING CLERK OF COURT TO
)	ADMINISTRATIVELY CLOSE THIS CASE

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

PROCEDURAL HISTORY

The instant petition was filed on February 24, 2016, challenging Petitioner’s 2008 sentence in the Kings County Superior Court for grand theft and receiving stolen property, and his resulting sentence of 8 years in prison. (Doc. 1). The petition raises a single claim of ineffective assistance of trial counsel. In conducting the preliminary screening of the petition, the Court has become aware that Petitioner had filed a previous federal petition in this Court challenging the same 2008 conviction in case no. 1:11-cv-00131-BAM, which is still pending.

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DISCUSSION

In Woods v. Carey, 525 F.3d 886 (9th Cir. 2008), the Ninth Circuit held that if a pro se petitioner files a habeas petition during the pendency of a previous petition, the district court should construe the second petition as a motion to amend the previous petition rather than as a “second or successive” petition that must be dismissed. Woods, 525 F.3d at 889-890.

As discussed, Petitioner has a pending federal habeas petition in case no. 1:11-cv-00131-BAM, challenging the same conviction as is being challenged in the instant case. Under Woods, therefore, this Court must construe the instant petition as a motion to amend the petition in case no. 1:11-cv-00131-BAM with the claims raised herein. Accordingly, the Court will direct the Clerk of the Court to file this petition in case no. 1:11-cv-00131-BAM as a motion to amend the petition in that case and will direct the Clerk of the Court to close this case.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED as follows:

1. The Court construes the instant petition for writ of habeas corpus (Doc. 1), as a motion to amend the petition in case no. 1:11-cv-00131-BAM to include the claim raised herein;
2. The Clerk of Court is DIRECTED to docket in case no. 1:11-cv-00131-BAM the petition for writ of habeas corpus in this case (Doc. 1) as a motion to amend;
3. The Clerk of Court is DIRECTED to close this case.

IT IS SO ORDERED.

Dated: February 27, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE