IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JEROME LEE CROSS, Petitioner, **v.** **KINGS COUNTY SUPERIOR COURT,** Respondent.	**Case No. 1:14-cv-00863 MJS (HC)** **ORDER DENYING PETITIONER'S MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS** **(Docs. 22, 24)**

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The parties have consented to Magistrate Judge jurisdiction. (ECF Nos. 6-7.)

On June 6, 2014, Petitioner filed a petition for writ of habeas corpus. (Pet., ECF No. 1.) On September 2, 2014, the Court dismissed the petition as untimely. (ECF No. 12.) Petitioner filed a motion for reconsideration of the judgment on September 12, 2014. (ECF No. 14.) On December 12, 2014, the Court granted the motion for reconsideration in part. (ECF No. 21.) The Court granted the motion with regard to claim one, but found nevertheless it had been properly dismissed for failure to exhaust (rather than for being

untimely as found earlier). However, the Court denied the motion for reconsideration as to the second through fourth claims as they remained untimely.

On September 18, 2015, the Court received a motion to amend the petition for writ of habeas corpus. (ECF No. 22.) Respondent filed a response to the motion on October 7, 2015, and Petitioner filed a reply on November 6, 2015. (ECF No. 23-24.)

The motion to amend only addresses substantive issues presented in the claims, and does not address the issues of exhaustion and untimeliness that formed the basis of the dismissal of the petition.

Based on the Court's review of the motion to amend, the Court's dismissal of the petition would remain unchanged despite Petitioner's attempt to rephrase the arguments in his petition.

The Court finds that amendment would be futile such that justice does not require amendment under Fed. R. Civ. P. 15. IT IS HEREBY ORDERED that the Motion to Amend be DENIED.

IT IS SO ORDERED.

Dated: March 23, 2016

/s/ *Michael J. Seng*
UNITED STATES MAGISTRATE JUDGE