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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALONZO McKINNEY,

Petitioner,

v.

HEDGPETH,

Respondent.

1:14-cv-01271-GSA-HC

ORDER DISCHARGING ORDER TO
SHOW CAUSE (ECF No. 12)

ORDER SETTING BRIEFING SCHEDULE

ORDER DIRECTING CLERK OF COURT
TO SERVE DOCUMENTS ON ATTORNEY
GENERAL

Petitioner is a state prisoner proceeding pro se in a habeas corpus action 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 24, 2014, Petitioner filed his petition in the United States District Court for the Northern District of California. On January 9, 2015, Magistrate Judge Laurel Beeler of the Northern District of California issued an order dismissing Petitioner’s first claim concerning prison conditions and transferring the action to this Court for consideration of the remaining two claims which challenge the execution of Petitioner’s sentence. (ECF No. 4). Petitioner alleges that he was denied witnesses (including the reporting employee) and evidence at a disciplinary hearing on September 11, 2011 or earlier. Petitioner also alleges that he was denied witnesses (including the reporting employee) at a disciplinary hearing on or about May 9, 2011. Petitioner alleges that the length of his confinement was affected by both of these claims.

1 On March 18, 2015, the Court issued an order to show cause why the petition should not
2 be dismissed for containing unexhausted claims and for violating the statute of limitations. (ECF
3 No. 12). Petitioner filed a response indicating that he had exhausted the claims in his petition
4 and that he raised these claims to the Bakersfield Superior Court, Fresno Appellate Court, and
5 the California Supreme Court. Petitioner also indicates that he has complied with the statute of
6 limitations. Based upon Petitioner's indication that he has exhausted his claims and that he
7 complied with the statute of limitations, and good cause having been shown, the Court will
8 discharge the pending order to show cause issued on March 18, 2015.

9 It is not clear from the face of the petition whether Petitioner is entitled to relief. 28
10 U.S.C. § 2243. Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases and
11 Rule 16 of the Federal Rules of Civil Procedure, the Court HEREBY ORDERS:

- 12 1. The Order to Show Cause issued on March 18, 2015, is DISCHARGED;
- 13 2. Respondent SHALL FILE a RESPONSE to the Petition within **SIXTY (60)** days
14 of the date of service of this order. See Rule 4, Rules Governing Section 2254
15 Cases; Cluchette v. Rushen, 770 F.2d 1469, 1473-1474 (9th Cir. 1985) (court has
16 discretion to fix time for filing a response). A Response can be made by filing
17 one of the following:

18 A. AN ANSWER addressing the merits of the Petition. Respondent
19 SHALL INCLUDE with the Answer any and all transcripts or other
20 documents necessary for the resolution of the issues presented in the
21 Petition. See Rule 5(c), Rules Governing Section 2254 Cases. Any
22 argument by Respondent that Petitioner has procedurally defaulted a claim
23 SHALL BE MADE in the ANSWER, but must also address the merits of
24 the claim asserted.

25 B. A MOTION TO DISMISS the Petition. A Motion to Dismiss
26 SHALL INCLUDE copies of all Petitioner's state court filings and
27 dispositive rulings. See Rule 5(c), Rules Governing Section 2254 Cases.

- 28 2. If Respondent files an Answer to the Petition, Petitioner MAY FILE a Traverse

1 within **THIRTY (30)** days of the date Respondent's Answer is filed with the
2 Court. If no Traverse is filed, the Petition and Answer are deemed submitted at
3 the expiration of the thirty days.

4 3. If Respondent files a Motion to Dismiss, Petitioner **SHALL FILE** an Opposition
5 or Statement of Non-Opposition within **TWENTY-ONE (21)** days of the date
6 Respondent's Motion is filed with the Court. Any Reply to an Opposition to the
7 Motion to Dismiss **SHALL** be filed within **SEVEN (7)** days after the opposition
8 is served. The Motion to Dismiss will be deemed submitted **TWENTY-EIGHT**
9 **(28)** days after the service of the Motion or when the Reply is filed, whichever
10 comes first. See Local Rule 230(l).

11 4. Respondent **SHALL COMPLETE** and **RETURN** to the Court within **THIRTY**
12 **(30)** days a Consent/Decline form indicating whether Respondent consents or
13 declines to consent to the jurisdiction of a the United States Magistrate Judge
14 pursuant to Title 28 U.S.C. § 636(c)(1).

15 5. The Clerk of the Court is **DIRECTED** to **SERVE** a copy of this order on the
16 Attorney General or her representative.

17 All motions shall be submitted on the record and briefs filed without oral argument unless
18 otherwise ordered by the Court. Local Rule 230(l). Extensions of time will only be granted
19 upon a showing of good cause. All provisions of Local Rule 110 are applicable to this order.

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21
22 IT IS SO ORDERED.

23 Dated: June 23, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE