

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TERRANCE BROWNLEE
Petitioner,
v.
RONALD RACKLEY,
Respondent.

Case No. 1:15-cv-01158-LJO-SAB-HC

**FINDINGS AND RECOMMENDATION
REGARDING PETITION FOR WRIT OF
HABEAS CORPUS**

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

BACKGROUND

21 On May 21, 2014, Petitioner filed a petition for writ of habeas corpus in the Sacramento
22 Division of this District. On December 12, 2014, the petition was transferred to the Fresno
23 Division. The case was assigned Case No. 1:14-cv-01990-LJO-SAB-HC. The petition
24 challenges Petitioner's 2010 conviction for murder and robbery sustained in Fresno County
25 Superior Court. On June 19, 2015, the Court issued a findings and recommendation
26 recommending that the petition be dismissed as successive. On July 9, 2015, Petitioner filed
27 objections to the findings and recommendation, a motion to appoint counsel, affidavit,
28 declaration, and request for judicial notice. On July 20, 2015, Petitioner filed a motion in

1 support of matters before this Court.

2 On July 27, 2015, Petitioner filed another petition for writ of habeas corpus in this Court.

3 The case was assigned Case No. 1:15-cv-01158-LJO-SAB-HC. The petition also challenges

4 Petitioner's 1980 conviction out of Fresno County Superior Court.

5 **II.**

6 **DISCUSSION**

8 A plaintiff is required to bring at one time all of the claims against a party or privies
9 relating to the same transaction or event. Adams v. California Dept. of Health Services, 487
10 F.3d 684, 693 (9th Cir. 2007). After weighing the equities of the case, the district court may
11 exercise its discretion to dismiss a duplicative later-filed action, to stay that action pending
12 resolution of the previously filed action, to enjoin the parties from proceeding with it, or to
13 consolidate both actions." Adams, 487 F.3d at 688.

14 "[W]here a new pro se petition is filed before the adjudication of a prior petition is
15 complete, the new petition should be construed as a motion to amend the pending petition rather
16 than as a successive application." Woods v. Carey, 525 F.3d 886, 888-890 (9th Cir. 2008). In
17 this case, the petition filed in Case No. 1:14-cv-01990-LJO-SAB-HC had not been adjudicated
18 when Petitioner commenced his second action. Therefore, the Court must consider the petition
19 filed in Case No. 1:15-cv-01158-SAB-HC as a motion to amend the previously-filed petition.

20 **III.**

21 **RECOMMENDATIONS**

23 Accordingly, IT IS HEREBY RECOMMENDED that the Clerk of Court be DIRECTED
24 to file the petition (ECF No. 1) from Case No. 1:15-cv-01158-LJO-SAB-HC in Case No. 1:14-
25 cv-01990-LJO-SAB-HC as a motion to amend and the Clerk of Court be DIRECTED to
26 ADMINISTRATIVELY CLOSE Case No. 1:15-cv-01158-SAB-HC.

27 This Findings and Recommendation is submitted to the assigned United States District
28 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local

1 Rules of Practice for the United States District Court, Eastern District of California. Within
2 fourteen (14) days after service of the Findings and Recommendation, Petitioner may file written
3 objections with the court and serve a copy on all parties. Such a document should be captioned
4 "Objections to Magistrate Judge's Findings and Recommendation." The assigned United States
5 District Court Judge will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. §
6 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may
7 waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839
8 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: August 11, 2015



UNITED STATES MAGISTRATE JUDGE

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