

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

United States District Court
Eastern District of California

Robert Elmer Barber,
Petitioner, No. Civ. S 04-1844 MCE PAN P
vs. Order
McGregor W. Scott, et al.,
Respondents.

-oOo-

September 2, 2004, petitioner filed a motion to determine whether venue for his habeas action lay in this court. December 6, 2004, petitioner submitted a petition for a writ of habeas corpus and since petitioner did not put any case number in the caption, the Clerk of the Court opened a new case. December 22, 2004, the court determined venue is proper in this court and gave petitioner 30 days to submit an application for a writ of habeas corpus in this case. February 1, 2005, this file was closed because petitioner did not submit a habeas petition. March 30,

1 2005, a different magistrate determined the December 6 habeas
2 petition should have been filed in this case and directed the
3 Clerk of the Court to make that petition part of this file.

4 Examination of the in forma pauperis affidavit reveals
5 petitioner is unable to afford the costs of suit. Leave to
6 proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

7 A judge "entertaining an application for a writ of habeas
8 corpus shall forthwith award the writ or issue an order directing
9 the respondent to show cause why the writ should not be granted,
10 unless it appears from the application that the applicant or
11 person detained is not entitled thereto." 28 U.S.C. § 2243.

12 Petitioner may be entitled to relief.

13 I therefore vacate the February 1, 2005, order to close this
14 file, grant petitioner's request to proceed in forma pauperis and
15 direct respondent to respond to petitioner's application within
16 60 days. See Rule 4, Fed. R. Governing § 2254 Cases. An answer
17 shall be accompanied by any and all transcripts or other
18 documents relevant to the determination of the issues presented
19 in the application. See Rule 5, Fed. R. Governing § 2254 Cases.
20 Petitioner's reply, if any, shall be filed and served within 30
21 days of service of an answer. If the response to petitioner's
22 application is a motion, petitioner's opposition or statement of
23 non-opposition shall be filed and served within 30 days of
24 service of the motion, and respondent's reply, if any, shall be
25 filed within 15 days thereafter. The Clerk of the Court shall
26 serve a copy of this order together with a copy of petitioner's

1 December 6, 2004, petition for a writ of habeas corpus pursuant
2 to 28 U.S.C. § 2254 on Jo Graves, Senior Assistant Attorney
3 General for the State of California.

4 Dated: May 26, 2005.

5 /s/ Peter A. Nowinski

6 PETER A. NOWINSKI

7 Magistrate Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26