

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID DANIEL CEPEDA,

Petitioner,

No. CIV S-04-1899 LKK JFM P

vs.

BRAD ESPINOZA, Warden,

Respondent.

ORDER

_____/

Petitioner is a former state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 30, 2008, petitioner filed a document entitled “Objections to Findings and Recommendations.” However, in that document, petitioner contends that the court failed to respond to his October 13, 2005 request to grant his petition for writ of habeas corpus. Petitioner argues that he was prepared to submit a traverse but did not do so because the court had not yet responded to his October 13, 2005 request. Petitioner asks the court to vacate the January 10, 2008 findings and recommendations.

However, in petitioner’s October 13, 2005 request, petitioner argued that the petition should be granted based on respondent’s failure to timely file an answer. Court records reflect that on July 20, 2005, respondent was granted sixty days in which to file an answer.

1 Respondent filed a timely answer on September 15, 2005. In addition, the docket reflects that the
2 court responded to petitioner's December 26, 2006 request for status report, informing petitioner
3 that respondent filed an answer on September 15, 2005. (Docket No. 42.) Subsequently,
4 petitioner filed three separate documents but did not file a traverse or a request for extension of
5 time in which to file a traverse.

6 Petitioner acknowledges that he received the answer filed September 15, 2005.
7 Petitioner appears to contend that respondent was required to re-submit its answer with the
8 proper judge's initials pursuant to the court's March 11, 2005 order reassigning this action from
9 Judge Shubb to Judge Karlton, and that he did not receive an answer "modified" on February 7,
10 2007.

11 Petitioner is advised that the "modified" entry dated February 7, 2007, was the
12 date of this court's response to his December 26, 2006 request for status report. On that date,
13 petitioner was notified that respondent filed an answer on September 15, 2005. Petitioner
14 concedes he received that answer. Thus, petitioner should have filed his traverse or request for
15 extension of time to file a traverse on or before October 15, 2005. In any event, petitioner should
16 have filed the traverse shortly after February 7, 2007 when he received confirmation from the
17 court that respondent filed its answer.

18 Now, over two years and two months later, petitioner seeks to have the findings
19 and recommendations vacated and allow petitioner to file a late traverse. Petitioner's request is
20 untimely and will be denied. However, the court will grant petitioner an extension of time in
21 which to file objections to the findings and recommendations.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. Petitioner's January 30, 2008 request to vacate the findings and
24 recommendations and grant him an extension of time in which to file a traverse is denied.

25 ////

26 ////

