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

FELIX LUIS COLON, JR.,

Petitioner,

No. CIV S-06-2500 FCD DAD P

vs.

UNKNOWN,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner, a state prisoner confined in Kern Valley State Prison, has submitted a letter requesting appointment of counsel to assist him in preparing and filing a habeas petition. Petitioner’s request was not accompanied by a habeas petition.

A federal habeas action is commenced by filing a petition for writ of habeas corpus, and no habeas action is considered “pending” until such a petition is filed. Woodford v. Garceau, 538 U.S. 202, 210 (2003). The petition for habeas corpus relief must seek adjudication on the merits of the petitioner’s claims. Id. at 207. The filing of some other document, such as a motion for appointment of counsel, an application to proceed in forma pauperis, or a request for extension of time, will not commence a habeas action or toll the statute of limitations because such filings are not equivalent to a petition for relief from the petitioner’s state judgment of conviction. See Isley v. Arizona Dep’t of Corrections, 383 F.3d 1054, 1055 (9th Cir. 2004).

1 The petitioner in this case has not properly commenced a federal habeas action.
2 This case should be dismissed without prejudice to a properly commenced habeas action. When
3 petitioner submits a habeas petition, it must not include the case number assigned to this
4 improperly filed action.

5 Accordingly, IT IS ORDERED that:

- 6 1. Petitioner's November 9, 2006 request for appointment of counsel is denied;
7 2. The Clerk of the Court is directed to send petitioner a habeas petition form
8 with an application to proceed in forma pauperis in a habeas case; and

9 IT IS RECOMMENDED that this action be dismissed without prejudice to the
10 proper commencement of a habeas action.

11 These findings and recommendations will be submitted to the United States
12 District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
13 fifteen days after being served with these findings and recommendations, petitioner may file
14 written objections with the court. A document containing objections should be titled "Objections
15 to Findings and Recommendations." Petitioner is advised that failure to file objections within
16 the specified time may, under certain circumstances, waive the right to appeal the District Court's
17 order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: November 16, 2006.

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21 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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