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

ANGELO SEARCY,

Petitioner,

No. CIV S-07-0368 GEB KJM P

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has not, however, filed an in forma pauperis affidavit or paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a), 1915(a). Petitioner will be provided the opportunity to either submit an affidavit in support of a request to proceed in forma pauperis or submit the appropriate filing fee.

In addition, petitioner has named the people of the state of California as respondent in this action. This individual is not the proper respondent in this action, brought by a person in federal custody who is challenging a state court conviction. Instead, petitioner must name “the entity or person who exercises legal control with respect to the challenged custody.” Rumsfield v. Padilla, 542 U.S. 426, 438 (2004) (internal quotation omitted). Accordingly, the

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1 instant petition must be dismissed with leave to amend. See Stanley v. California Supreme
2 Court, 21 F.3d 359, 360 (9th Cir. 1994).

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. The petition is dismissed and petitioner is given thirty days from the date of
5 this order in which to file an amended petition naming the correct respondent.

6 2. In conjunction with the amended petition, petitioner shall submit an affidavit
7 in support of his request to proceed in forma pauperis or the appropriate filing fee; petitioner's
8 failure to comply with this order will result in the dismissal of this action.

9 3. The Clerk of the Court is directed to send petitioner a copy of the habeas
10 corpus form for a person in state custody and the in forma pauperis form used by this district.

11 DATED: March 1, 2007.

12 
13 U.S. MAGISTRATE JUDGE

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15 sear0368.101a

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