

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

MICHAEL ANTHONY HALL,

Petitioner, No. CIV S-07-2263 FCD GGH F

VS.

MATTHEW C. KRAMER, Warden,

Respondent. ORDER

Petitioner, a state prisoner now proceeding pro se on an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, recently filed a premature motion, pursuant to Fed. R. Civ. P. 60(b), which was erroneously set for hearing on the court's calendar. The motion is both inapposite and premature because under Rule 60(b), while a party may seek relief from a final order or judgment, and to re-open his case in limited circumstances, not only has no final order/judgment been rendered herein, this matter has not yet been submitted before this court. Further, any motion filed in this case may not be set on the court calendar at this time because CDCR records indicate that petitioner is an inmate (currently incarcerated at Folsom State Prison). See Local Rule 78-230(m)(where one party is incarcerated and proceeding in propria persona (or pro se), motions shall be submitted without oral argument unless otherwise ordered).

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Respondent filed an answer on 11/17/18; petitioner's purported motion was filed on 12/18/08. The court will permit petitioner an extension of time of 30 days from the date of this order to file a reply/traverse to the answer. Should petitioner seek to have his inapposite motion, filed on 12/18/08, deemed to be his traverse, he must so inform the court within 30 days. Otherwise, the motion will be altogether stricken.

Accordingly, IT IS ORDERED that:

1. The January 22, 2008, hearing on petitioner pro se's premature and inapposite Rule 60(b) motion (Docket # 35) is hereby vacated from the court's calendar;
2. Petitioner is granted 30 days from the date of this order to file a reply/traverse;
3. In the alternative, should petitioner seek to have the purported Rule 60(b) motion construed to be his traverse, petitioner has 30 days to so inform the court; otherwise, the Docket # 35 will be stricken;
4. Following the expiration of time for petitioner to respond to this order, this matter will be deemed submitted.

DATED: January 12, 2009

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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