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

MICHAEL E. SCHERFFIUS,

Petitioner,

No. CIV S-08-0085 MCE JFM P

vs.

JAMES TILTON, Secretary, CDCR,

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, together with a request to proceed in forma pauperis.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

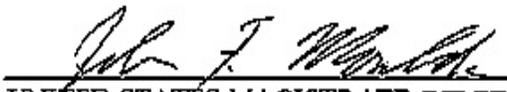
“A petitioner for habeas corpus relief must name the state officer having custody of him or her as the respondent to the petition.” Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). Petitioner has named James Tilton as respondent in this action. This individual is not the proper respondent in this action. Accordingly, the instant petition must be dismissed with leave to amend. See Stanley, 21 F.3d at 360.

1 On January 23, 2008, petitioner submitted a copy of his application to proceed in
2 forma pauperis and petition for writ of habeas corpus, both dated December 28, 2007. Because
3 these filings are duplicative of the documents previously filed on January 14, 2008, the
4 documents filed January 23, 2008 will be retained in the court file and disregarded.

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

- 6 1. Petitioner's request to proceed in forma pauperis is granted;
- 7 2. Petitioner's application for writ of habeas corpus is dismissed with leave to file
8 an amended petition within thirty days from the date of this order;
- 9 3. Any amended petition must be filed on the form employed by this court, must
10 name the proper respondent, and must state all claims and prayers for relief on the form. It must
11 bear the case number assigned to this action and must bear the title "Amended Petition";
- 12 4. The Clerk of the Court is directed to send petitioner the form for habeas corpus
13 application; and
- 14 5. The documents filed January 23, 2008 will be retained in the court file and
15 disregarded (docket nos. 6 & 7).

16 DATED: February 6, 2008.

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19 UNITED STATES MAGISTRATE JUDGE

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