(HC) Montgomery vs. Sisto, et al., Doc. 11

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN MONTGOMERY,

Petitioner,

vs.

D. K. SISTO, Warden, California State Prison, Solano,

Respondent.

No. 2:08-cv-00381-JKS

ORDER

Petitioner Brian Montgomery, a state prisoner appearing *pro se*, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2254. Pending before the Court is a Petition for Writ of Habeas Corpus filed July 21, 2008, at Docket No. 9.

Montgomery's original petition at Docket No. 1 challenges a 2007 prison disciplinary action. The petition filed at Docket No. 9 challenges the October 1, 2007, denial of parole. It appears to the Court that Montgomery's petition filed at Docket No. 9 is actually a new petition, not an amendment of his original petition, and should have been filed as a new case. This case should proceed on Montgomery's original petition filed February 20, 2008, at Docket No. 1.

The Clerk of the Court is directed to strike the Petition for Writ of Habeas Corpus at Docket No. 9 from this case and open a new case using this document.

IT IS SO ORDERED.

Dated: February 3, 2009.

/s/ James K. Singleton, Jr.
JAMES K. SINGLETON, JR.
United States District Judge

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