

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MICHAEL LEWIS OVERTON,

Petitioner,

No. 2:08-cv-1128-MCE-JFM (HC)

vs.

WARDEN, CALIFORNIA MEDICAL
FACILITY,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding pro se, commenced this action by filing a form civil rights complaint pursuant to 42 U.S.C. § 1983. By order filed August 21, 2008, petitioner was granted leave to proceed in forma pauperis and the initial complaint was dismissed with leave to file either an amended complaint or a habeas corpus petition. After receiving an extension of time, on November 10, 2008, petitioner filed a petition for writ of habeas corpus.¹ By order filed November 19, 2008, petitioner’s petition was dismissed with leave to amend to name the proper respondent. See Order filed November 19, 2008 (quoting Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254)). On December 29, 2008, petitioner filed a second amended petition.

¹ The petition was docketed as an amended petition and will be referred to herein as an amended petition.

1 In the second amended petition, petitioner has cured the defect identified in the
2 court's November 19, 2008 order in that petitioner has now named the proper respondent in this
3 action. However, by the amended petition filed November 10, 2008, petitioner challenged a
4 decision of the California Board of Parole Hearings denying him parole. In the second amended
5 petition, petitioner's first claim for relief challenges his commitment offense. His second and
6 third claims for relief refer to an "attached" writ of habeas corpus" but there is no petition for
7 writ of habeas corpus attached to the second amended petition.

8 Petitioner was convicted in Alameda County Superior Court. While both this
9 Court and the United States District Court in the district where petitioner was convicted have
10 jurisdiction, see Braden v. 30th Judicial Circuit Court, 410 U.S. 484 (1973), any and all
11 witnesses and evidence necessary for the resolution of petitioner's application are more readily
12 available in Alameda County. Id. at 499 n.15; 28 U.S.C. § 2241(d). If in fact petitioner is
13 challenging his commitment offense, this action will be transferred to the United States District
14 Court for the Northern District of California. However, because the basis for petitioner's second
15 and third claims for relief are not clear from the second amended petition, that petition will be
16 dismissed and petitioner will be given an opportunity to file a third amended petition. Petitioner
17 is cautioned that he must file separate petitions to challenge his commitment offense and a denial
18 of parole; he cannot challenge both in the same action. See Rule 2(e), 28 U.S.C. foll. § 2254 ("A
19 petitioner who seeks relief from judgments of more than one state court must file a separate
20 petition covering the judgment or judgments of each court.")

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

- 22 1. Petitioner's second amended petition is dismissed with leave to amend;
- 23 3. Within thirty days from the date of this order, petitioner shall complete the
24 attached Notice of Amendment and submit the following documents to the court:
 - 25 a. The completed Notice of Amendment; and
 - 26 b. An original and one copy of the Third Amended Petition.

1 4. Any third amended petition must bear the case number assigned to this action
2 and the title "Third Amended Petition"; and

3 5. The Clerk of the Court is directed to send petitioner the court's form for
4 application for writ of habeas corpus.

5 DATED: January 21, 2009.

6
7 
8 UNITED STATES MAGISTRATE JUDGE

9 12
10 over1128.3am

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MICHAEL LOUIS OVERTON,

Petitioner,

No. 2:08-cv-1128-MCE-JFM (HC)

vs.

WARDEN, CALIFORNIA MEDICAL
FACILITY,

NOTICE OF AMENDMENT

Respondent.

_____ /

Petitioner hereby submits the following document in compliance with the court's
order filed _____:

_____ Third Amended Petition

DATED:

Petitioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MICHAEL LEWIS OVERTON,

Petitioner,

No. 2:08-cv-1128 MCE JFM (HC)

vs.

SANDRA BRYSON, Commissioner,
et al.,

Respondents.

NOTICE OF AMENDMENT

_____ /

Petitioner hereby submits the following document in compliance with the court's
order filed _____:

Second Amended Habeas Corpus Petition

DATED:

Petitioner