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

ERICK HUFF,

Petitioner,

No. 2:08-cv-3053 JFM (HC)

vs.

MARTEL, Warden,

Respondent.

ORDER

_____/

Petitioner, a state prisoner at Mule Creek State Prison, has filed a document styled as a motion seeking appointment of counsel. No other pleadings have been filed by the petitioner. In order to commence an action, petitioner must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases,¹ and petitioner must either pay the required filing fee or file a properly completed application requesting leave to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). The court will not issue any orders granting or denying relief until an action has been properly commenced. Therefore,

¹ Petitioner is cautioned that the exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). Also, the habeas corpus statute imposes a one year statute of limitations for filing non-capital habeas corpus petitions in federal court. In most cases, the one year period will start to run on the date on which the state court judgment became final by the conclusion of direct review or the expiration of time for seeking direct review, although the statute of limitations is tolled while a properly filed application for state post-conviction or other collateral review is pending. 28 U.S.C. § 2244(d).

1 petitioner's motion will be denied without prejudice. Petitioner will be provided the opportunity
2 to file his petition, and to submit a complete application requesting leave to proceed in forma
3 pauperis or to submit the appropriate filing fee.

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

5 1. Petitioner's December 17, 2008 motion for appointment of counsel and
6 application to proceed in forma pauperis are denied without prejudice;

7 2. Petitioner is granted thirty days from the date of service of this order to file a
8 petition that complies with the requirements of the Rules Governing Section 2254 Cases, the
9 Federal Rules of Civil Procedure, and the Local Rules of Practice; the petition must bear the
10 docket number assigned this case; petitioner must file an original and two copies of the petition.
11 Petitioner shall also submit, within thirty days from the date of this order, a properly completed
12 application to proceed in forma pauperis on the form provided by the Clerk of Court, or the filing
13 fee in the amount of \$5.00. Petitioner's failure to comply with this order will result in a
14 recommendation that this matter be dismissed; and

15 3. The Clerk of the Court is directed to send petitioner the court's form for filing
16 a petition for writ of habeas corpus, and the application to proceed in forma pauperis by a
17 prisoner.

18 DATED: January 5, 2009.

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21 UNITED STATES MAGISTRATE JUDGE

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