

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

AGUSTIN MARTINEZ MORENO,

Petitioner,

No. CIV S-09-0069 GGH P

vs.

ROBERT J. HERNANDEZ, Warden,

Respondent.

ORDER

_____/

Petitioner, a state prisoner at R.J. Donovan Correctional Facility, has filed a document styled as a request for permission to file a late petition for writ of habeas corpus. 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, and petitioner must either pay the required filing fee or file an 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, petitioner’s motion will be denied without prejudice. Petitioner will be provided the opportunity to file his petition, and to submit an application requesting leave to proceed in forma pauperis or to submit the appropriate filing fee.

////

////

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

2 1. Petitioner’s January 8, 2009 request for permission to file a late petition for
3 writ of habeas corpus (Docket No. 1) is denied without prejudice;

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

11 3. The Clerk of the Court is directed to send petitioner the court’s form for filing
12 a petition for writ of habeas corpus, and the application to proceed in forma pauperis by a
13 prisoner.

14 DATED: January 20, 2009

15 /s/ Gregory G. Hollows

16 _____
17 GREGORY G. HOLLOWES
18 UNITED STATES MAGISTRATE JUDGE

18 GGH:mp
19 more0069.nopetition