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

SHAKA SENEGAL MUHAMMAD,

Petitioner,

No. CIV S-09-2008 GGH P

vs.

D.K. SISTO,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis.

Petitioner alleges that he is a member of the Lost Found Nation of Islam of Messenger Elijah Muhammad. Petitioner alleges that he is forced to live with cellmates who eat pork and practice sodomy in violation of his First Amendment rights. Petitioner also alleges that California State Prison -Solano is promoting homosexuality by passing out condoms in violation of his First Amendment rights.

The purpose of a habeas corpus petition brought pursuant to 28 U.S.C. § 2254 is to challenge the validity of confinement. The purpose of a civil rights action brought pursuant to 42 U.S.C. § 1983 is to challenge a condition of confinement. Because petitioner is challenging conditions of confinement, the court construes this action as a civil rights action. The petition is

1 dismissed with thirty days to file a complaint.

2 Petitioner has submitted a declaration that makes the showing required by 28
3 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

4 Petitioner is required to pay the statutory filing fee of \$350.00 for this action. 28
5 U.S.C. §§ 1914(a), 1915(b)(1). Petitioner has been without funds for six months and is currently
6 without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C.
7 § 1915(b)(1). Petitioner is obligated to make monthly payments of twenty percent of the
8 preceding month's income credited to plaintiff's prison trust account. These payments shall be
9 collected and forwarded by the appropriate agency to the Clerk of the Court each time the
10 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
11 § 1915(b)(2).

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. This action is construed as a civil rights action pursuant to 42 U.S.C. § 1983;
14 2. The petition is dismissed with thirty days to file a civil rights complaint; failure
15 to file a civil rights complaint within that time will result in a recommendation of dismissal of
16 this action;
17 3. Petitioner's request to proceed in forma pauperis (no. 2) is granted;
18 4. Petitioner is obligated to pay the statutory filing fee of \$350.00 for this action.

19 The fee shall be collected and paid in accordance with this court's order to the Director of the
20 California Department of Corrections and Rehabilitation filed concurrently herewith.

21 DATED: July 30, 2009

22 /s/ Gregory G. Hollows

23 UNITED STATES MAGISTRATE JUDGE
24

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