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

BILLY PAUL BIRDWELL, II,

Petitioner,

No. CIV S-09-2024 LKK DAD P

vs.

M. MARTEL,

Respondent.

ORDER

_____ /

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

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Since petitioner may be entitled to relief if the claimed violation of constitutional rights is proved, respondent will be directed to file a response to petitioner’s habeas petition.

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

2 1. Petitioner's application to proceed in forma pauperis (Doc. No. 2), is granted;

3 2. Respondent is directed to file a response to petitioner's habeas petition within
4 sixty days from the date of this order. See Rule 4, Fed. R. Governing § 2254 Cases. An answer
5 shall be accompanied by all transcripts and other documents relevant to the issues presented in
6 the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

7 3. If the response to the habeas petition is an answer, petitioner's reply, if any,
8 shall be filed and served within thirty days after service of the answer;

9 4. If the response to the habeas petition is a motion, petitioner's opposition or
10 statement of non-opposition to the motion shall be filed and served within thirty days after
11 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days
12 thereafter; and

13 5. The Clerk of the Court shall serve a copy of this order, a copy of the petition
14 for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 1), and the court's form
15 regarding consent or request for reassignment on Jennifer A. Neill, Supervising Deputy Attorney
16 General.

17 DATED: October 7, 2009.

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20 _____
21 DALE A. DROZD
22 UNITED STATES MAGISTRATE JUDGE

21 DAD:4
22 bird2024.100