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

WILBUR PITTMAN,

Petitioner,

No. CIV S-09-2314 DAD P

vs.

M. MARTEL,

Respondent.

ORDER

_____ /

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

Petitioner’s petition is titled, “Third Amended Petition for Writ of Habeas Corpus.” Therein, petitioner indicates that he is not challenging his underlying judgment of conviction. However, it is unclear to the court what petitioner is attempting to challenge and on what grounds. For example, petitioner states with respect to his first ground for relief simply: “P.C. 3410 on C-File Anylisis (sic) [.]” (Petition at 6.) The facts alleged by petitioner in support of this claim are equally incomprehensible. The court also notes that on the same day petitioner filed this action, he filed another habeas action entitled Pittman v. Martel, No. CIV S-09-2313 GGH P. In that case, the court has ordered petitioner to file an amended petition. Petitioner was

1 also advised in that other action that because he is incarcerated at the California Rehabilitation
2 Center in Riverside County and is serving a sentence pursuant to a judgment of conviction
3 entered in the San Diego County Superior Court, his habeas action may be transferred to the
4 United States District Court for the Central District of California.

5 Because it is unclear what petitioner is challenging, the court will dismiss the
6 habeas petition and grant petitioner leave to file an amended petition. See Rule 4 of the Rules
7 Governing Section 2254 Cases (“If it plainly appears from the petition . . . that the petitioner is
8 not entitled to relief in the district court, the judge must dismiss the petition . . .”).

9 Alternatively, petitioner may elect to voluntarily dismiss this action and proceed with his habeas
10 action in No. CIV S-09-2313 GGH P, since he cannot challenge the same conviction, prison
11 disciplinary action or parole denial in two different actions. The court will not rule on
12 petitioner’s request to proceed in forma pauperis until petitioner notifies that he intends to
13 proceed with this action and files his amended petition.

14 Accordingly, IT IS HEREBY ORDERED that:

15 1. Petitioner’s petition for writ of habeas corpus, filed on August 21, 2009, is
16 summarily dismissed;

17 2. Petitioner is granted thirty days from the date of service of this order to file an
18 amended petition that complies with the requirements of the Federal Rules of Civil Procedure;
19 the amended petition must bear the docket number assigned this case and must be labeled
20 “Amended Petition.” Alternatively, petitioner shall notify the court that he requests voluntary
21 dismissal of this action;

22 3. Petitioner’s failure to comply with order will result in the dismissal of this
23 action; and

24 ////

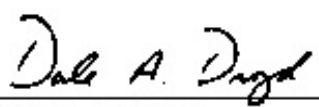
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4. The Clerk of the Court is directed to provide petitioner with the court's form
petition for a writ of habeas corpus for a state prisoner.

DATED: October 26, 2009.



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

DAD:4
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