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

CLARENCE JOSEPH HAYES,

Petitioner,

No. CIV S-09-2433 GEB EFB P

vs.

D.K. SISTO,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus. See 28 U.S.C. § 2254. Petitioner seeks leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a).

Examination of the *in forma pauperis* affidavit reveals that petitioner is unable to afford the costs of suit.

A judge “entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. It is not apparent from the face of the application that the petitioner is not entitled to relief.

///

1 Accordingly, it is hereby ordered that:

2 1. Petitioner's request for leave to proceed *in forma pauperis* is granted.

3 2. Respondent shall file and serve either an answer or a motion in response to
4 petitioner's application within 60 days from the date of this order. *See* Rule 4, Fed. R.
5 Governing § 2254 Cases. Any response shall be accompanied by any and all transcripts or other
6 documents relevant to the determination of the issues presented in the application. *See* Rules 4,
7 5, Fed. R. Governing § 2254 Cases.

8 3. Petitioner's reply, if any, shall be filed and served within 30 days of service of an
9 answer.

10 4. If the response to petitioner's application is a motion, petitioner's opposition or
11 statement of non-opposition shall be filed and served within 30 days of service of the motion,
12 and respondents' reply, if any, shall be filed within 14 days thereafter.

13 5. The Clerk of the Court shall serve a copy of this order together with a copy of
14 petitioner's August 31, 2009, petition for a writ of habeas corpus with any and all attachments on
15 Michael Patrick Farrell, Senior Assistant Attorney General for the State of California. The Clerk
16 of the Court also shall serve on the Senior Assistant Attorney General the consent form used in
17 this court.

18 Dated: December 14, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE