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

SHAKA SENEGAL MUHAMMAD,

Petitioner,

No. 2:09-cv-2503 JFM

vs.

WARDEN D.K. SISTO, et al.,

ORDER

Respondents

_____ /

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

By order filed October 14, 2009, petitioner’s original petition was dismissed with leave to amend. Petitioner was directed to file an amended petition raising only the first claim concerning the loss of good time credits. Petitioner was advised that claims concerning conditions of confinement and must be raised, if at all, in a civil rights complaint pursuant to 42 U.S.C. § 1983.

On October 30, 2009, petitioner filed an amended petition in which he raised four grounds for relief. His first ground alleges a violation of his First Amendment rights by the wrongful imposition of a prison disciplinary with the attendant loss of good time credits. This

1 claim sounds in habeas and is appropriately raised in the habeas petition. Petitioner's remaining
2 claims, however, concern conditions of confinement that are more appropriately raised in a civil
3 rights complaint pursuant to 42 U.S.C. § 1983.

4 Because petitioner has placed all four claims on one form, the amended petition
5 must be dismissed, and petitioner will be granted leave to file a second amended habeas petition
6 raising only the first claim. Petitioner will also be granted leave to file a civil rights complaint in
7 which he may raise his conditions of confinement claims.¹ Petitioner may not include both
8 habeas and civil rights claims in one document. Petitioner is admonished that failure to comply
9 with this order may result in the imposition of sanctions, including, but not limited to, a
10 recommendation that this action be dismissed.

11 Finally, the court notes that petitioner appended a number of exhibits to his
12 amended petition. Petitioner is cautioned to only append those exhibits pertinent to his prison
13 disciplinary, for example, a copy of the prison disciplinary he wishes expunged, as well as
14 documents demonstrating exhaustion of state court remedies with regard to the prison
15 disciplinary claim.

16 Accordingly, petitioner's amended petition will be dismissed with leave to amend.
17 Petitioner will be granted a period of thirty days in which to file a federal habeas corpus petition
18 raising only the first ground concerning the loss of his good time credits. If petitioner wishes to
19 pursue his conditions of confinement claims, he must file a separate civil rights complaint raising
20 those claims.

21 Therefore, IT IS HEREBY ORDERED that:

22 1. Petitioner is granted leave to proceed in forma pauperis.

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25 ¹ Petitioner is cautioned that if he proceeds to file a civil rights complaint, he will be
26 required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1).
Should petitioner file a civil rights complaint, he will incur a liability in the full amount of that fee
even if he is granted leave to proceed in forma pauperis with such an action. See 28 U.S.C. § 1915.

1 2. Petitioner's amended application for writ of habeas corpus is dismissed with
2 leave to file, within thirty days from the date of this order, an amended petition raising only the
3 first claim from the amended petition. Petitioner is cautioned that failure to comply with this
4 order may result in the dismissal of this action.

5 3. Any amended habeas corpus petition must bear the case number assigned to
6 this action and the title "Second Amended Petition."

7 4. Petitioner is granted thirty days in which to file a new civil rights complaint
8 containing his conditions of confinement claims.

9 5. The Clerk of the Court is directed to send petitioner the court's form for
10 application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a civil rights complaint
11 pursuant to 42 U.S.C. § 1983, along with a request to proceed in forma pauperis.

12 DATED: December 22, 2009.

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15 UNITED STATES MAGISTRATE JUDGE

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