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

GORDON JAMES WRIGHT,

Petitioner,

No. CIV S-09-2543 FCD DAD P

vs.

J. HAMLET, Warden,

Respondent.

ORDER

_____ /

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

By way of background, on September 10, 2009, petitioner commenced this action by filing a “mixed” petition for writ of habeas corpus, together with a one-page motion for a stay and abeyance. On October 27, 2009, the court issued an order explaining to petitioner the two procedures available to habeas petitioners who wish to proceed with exhausted and unexhausted claims for relief. See King v. Ryan, 564 F.3d 1133 (9th Cir. 2009). Based on petitioner’s filing of a “mixed” petition as well as his expressed concern regarding the running of the statute of limitations for the filing of a federal petition, the court construed petitioner’s motion for a stay and abeyance as a motion brought under Rhines v. Weber, 544 U.S. 269, 277 (2005). However, the court informed petitioner that based on the information he had provided to the court in his

1 motion it was not clear that the granting of a stay and abeyance would be appropriate in this case.
2 Specifically, petitioner's motion for a stay and abeyance did not provide sufficient facts and
3 information to satisfy the requirements of Rhines. Accordingly, the court denied petitioner's
4 motion without prejudice to the filing of a renewed motion for a stay and abeyance within thirty
5 days.

6 Petitioner has not filed a renewed motion for a stay and abeyance. He has,
7 however, filed an amended petition, a memorandum of points and authorities in support of his
8 petition, and a brief "Rebuttal to State Superior Ct. & State Supreme Ct. Ruling(s) Denying
9 Petition." Petitioner has also informed the court that he filed his original petition in this court
10 while his state habeas petition was still pending in the California Supreme Court. On October
11 22, 2009, however, the California Supreme Court denied his petition. Petitioner notes that he no
12 longer has any petitions pending on appeal or in any other court as to the judgment of conviction
13 under attack.

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

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

18 1. Respondent is directed to file a response to petitioner's December 31, 2009
19 amended habeas petition within sixty days from the date of this order. See Rule 4, Fed. R.
20 Governing § 2254 Cases. An answer shall be accompanied by all transcripts and other
21 documents relevant to the issues presented in the petition. See Rule 5, Fed. R. Governing § 2254
22 Cases;

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

25 3. If the response to the habeas petition is a motion, petitioner's opposition or
26 statement of non-opposition to the motion shall be filed and served within thirty days after

1 service of the motion, and respondent's reply, if any, shall be filed and served within fifteen days
2 thereafter; and

3 4. The Clerk of the Court shall serve a copy of this order, a copy of petitioner's
4 December 31, 2009 amended petition for writ of habeas corpus and accompanying memoranda
5 (Doc. Nos. 14, 17-18), and a copy of the form regarding consent or request for reassignment on
6 Michael Patrick Farrell, Senior Assistant Attorney General.

7 DATED: March 1, 2010.

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DALE A. DROZD
11 UNITED STATES MAGISTRATE JUDGE

10 DAD:9
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