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

EUGENE VIRGIL HALL,

Petitioner,

No. CIV S-09-2552 WBS DAD P

vs.

M.D. McDONALD, Warden,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On November 25, 2009, respondent filed a motion to dismiss the petition on the ground that it contains claims that have not been exhausted. Specifically, respondent argued that certain sub-issues raised in claims one and three of the petition pending before this court were unexhausted and that claims six and seven of the petition were completely unexhausted. In response to respondent’s motion to dismiss, petitioner filed a motion to amend his petition. Therein, petitioner sought leave to withdraw the same sub-issues and claims that respondent challenged as unexhausted. Respondent had not opposed or otherwise filed a response to petitioner’s motion to amend. Accordingly, on February 3, 2010, the court ordered respondent to file an opposition or a statement of non-opposition to petitioner’s motion and to show cause in

1 writing why petitioner's motion to amend, if granted, would not render respondent's motion to
2 dismiss moot. In response to the court's order, respondent has filed a statement of non-
3 opposition to petitioner's motion to amend and has acknowledged that granting petitioner's
4 motion will render respondent's motion to dismiss moot.

5 Good cause appearing, the court will grant petitioner's motion to amend. The
6 court will also direct petitioner to file an amended petition that does not include the unexhausted
7 claims identified above. Finally, the court will deny respondent's motion to dismiss as moot and
8 direct respondent to file an answer within sixty days of service of petitioner's amended petition.
9 Petitioner's reply, if any, shall be filed and served within thirty days after service of the answer.

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

11 1. Petitioner's December 10, 2009 motion to amend (Doc. No. 14) is granted;

12 2. Within thirty days of the date of service of this order petitioner shall file an
13 amended petition does not include the unexhausted claims outlined above. The amended petition
14 must bear the case number assigned to this action and must bear the title "Amended Petition;"

15 3. Respondent's November 25, 2009 motion to dismiss (Doc. No. 11) is denied as
16 moot;

17 4. Within sixty days of service of petitioner's amended petition, respondent shall
18 file and serve an answer, together with all transcripts and other documents relevant to the issues
19 presented in the petition. See Rule 5, Fed. R. Governing § 2254 Cases;

20 5. Petitioner's reply, if any, shall be filed and served within thirty days after
21 service of respondent's answer; and

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1 6. The Clerk of the Court is directed to send petitioner the court's form for filing
2 a petition for writ of habeas corpus.

3 DATED: February 9, 2010.

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6 _____
7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

7 DAD:9
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