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

DOUGLAS ANDERSEN,

Petitioner,

No. CIV S-09-2626 MCE DAD P

vs.

STATE OF CALIFORNIA,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 42 U.S.C. § 2254. On October 26, 2009, the court filed findings and recommendations recommending that this action be dismissed for petitioner’s failure to keep the court appraised of his current address. These findings and recommendations were issued in error and will be vacated.¹

Petitioner has not filed an in forma pauperis affidavit or paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). Petitioner will be provided the opportunity to
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¹ The court had served papers on petitioner by mail but had erroneously failed to include his prisoner identification number with the address on those mailings. As a result, it appears that petitioner has not received the court’s mailings.

1 either submit the appropriate affidavit in support of a request to proceed in forma pauperis or
2 submit the appropriate filing fee.

3 In reviewing petitioner’s habeas petition, it is not clear whether he is attempting to
4 challenge a judgment of conviction entered in the Los Angeles County Superior Court related to
5 the “transfer/sell narcotics.” (Petition at 2.) Petitioner is advised that if he is attempting to
6 challenge such a conviction, he should file a new habeas petition with the U.S. District Court for
7 the Central District of California in the Los Angeles Division of that court. Because petitioner
8 was not convicted in this district, and is not presently confined in the Sacramento Division of the
9 Eastern District of California, this court would not have jurisdiction to entertain such a habeas
10 application. If petitioner is challenging a different conviction or a parole revocation that was
11 adjudicated in this district, he should allege facts about that conviction or parole revocation in
12 any amended petition he elects to file in this court.

13 Petitioner is also advised that he had not named a proper respondent in his habeas
14 petition. “A petitioner for habeas corpus relief must name the state officer having custody of him
15 or her as the respondent to the petition.” Stanley v. California Supreme Court, 21 F.3d 359, 360
16 (9th Cir. 1994) (citing Rule 2(a), 28 U.S.C. foll. § 2254). The State of California is not a proper
17 respondent in this action.

18 Finally, petitioner is advised that the exhaustion of state court remedies is a
19 prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A
20 petitioner satisfies the exhaustion requirement by providing the highest state court with a full and
21 fair opportunity to consider all claims before presenting them to the federal court. Picard v.
22 Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1986).
23 Petitioner must eventually demonstrate that any claims presented in a federal habeas petition
24 have first been presented to the California Supreme Court.

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1 Accordingly, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations, filed on October 26, 2009, are vacated;

3 2. Should petitioner decide to proceed with a habeas action in this court,

4 petitioner shall submit, within thirty days from the date of this order:

5 a. An affidavit in support of his request to proceed in forma pauperis or
6 the appropriate filing fee;

7 b. An amended petition that complies with the requirements of the Federal
8 Rules of Civil Procedure; the amended petition must bear the docket number assigned this case
9 and must be labeled "Amended Petition;" the amended petition must be filed on the form
10 employed by this court and must name a proper respondent; petitioner must answer each question
11 on the form petition and clarify the conviction that he is challenging;

12 3. Petitioner's failure to comply with this order will result in the dismissal of this
13 action; and

14 4. The Clerk of the Court is directed to provide petitioner with the court's form
15 application for requesting leave to proceed in forma pauperis and form petition for a writ of
16 habeas corpus by a state prisoner.

17 DATED: October 30, 2009.

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20 _____
DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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