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

NOEL PHILLIPE SCOTT,

Petitioner,

No. CIV S-09-2830 GGH P

vs.

JOHN W. HAVILAND, Warden,

Respondent.

ORDER

_____ /

By order, filed on October 1, 2010, the court directed petitioner either to submit the appropriate affidavit in support of a request to proceed in forma pauperis or the appropriate filing fee of \$5.00. Petitioner was cautioned that this would be his final opportunity to address his filing fee obligation, noting that petitioner, despite having been ordered to do so in an order filed on October 30, 2009, and then having been granted an extension of time to do so, by an order filed on November 24, 2009, had yet either to file an in forma pauperis affidavit or to pay the required filing fee . See 28 U.S.C. §§ 1914(a); 1915(a). Petitioner has failed to respond to the order.¹

_____ ¹ Petitioner filed a notice of change of address on November 12, 2010, more than a month after the issuance of the October 1, 2010 order and that order has not been returned in the mail, but it is possible that petitioner did not receive it; hence the court will not recommend dismissal of the petition at this time for petitioner’s failure to comply with repeated court orders and to meet his filing

1 In the October 1st order, the court further noted that by order filed on September
2 22, 2010, respondent's motion to dismiss the petition as untimely had been denied and a further
3 briefing schedule had been set. In accordance with that briefing schedule, respondent's answer
4 must be filed by within 60 days of the September 22nd order. However, respondent will herein be
5 granted an extension of time to file an answer until such time as, after petitioner has either filed
6 an in forma pauperis affidavit or the \$5.00 filing fee, the court has deemed petitioner to have
7 discharged his filing fee obligation.

8 Petitioner cannot ignore court orders or his filing fee obligation simply because
9 the amount of the fee is arguably de minimis:

10 All parties instituting a habeas proceeding in a district court of the
11 United States must pay a filing fee of \$5.00. 28 U.S.C. § 1914(a).
12 An action may proceed despite a party's failure to pay only if the
13 party is granted leave to proceed in forma pauperis pursuant to 28
14 U.S.C. § 1915(a). See Rodriguez v. Cook, 169 F.3d 1176, 1177
(9th Cir.1999). "To proceed in forma pauperis is a privilege not a
right." Smart v. Heinze, 347 F.2d 114, 116 (9th Cir.1965).

14 Pedroza-Medina v. Chertoff, 2007 WL 2705211 *1 (S.D. Cal. 2007).

15 The court will grant petitioner twenty-eight days to comply with this order.
16 Failure to do so will result in a recommendation of dismissal of this petition. See Fed. R. Civ. P.
17 41(b); Local Rule 110.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. Petitioner shall submit, within twenty-eight days from the date of this order, an
20 affidavit in support of his request to proceed in forma pauperis or the appropriate filing fee;
21 petitioner will have no further extension of time to do so; petitioner's failure to comply with this
22 order will result in a recommendation of dismissal of this action;

23 2. The Clerk of the Court is directed once again to send petitioner a copy of the in
24 forma pauperis form used by this district; and

25 _____
26 fee obligation.

