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

COLLIE GEORGE DOWNER,

Petitioner,

No. CIV S-09-3041 MCE DAD P

vs.

M. CRAMER, Warden,

Respondent.

ORDER

_____ /

Petitioner is an out-of-state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 10, 2010, the court ordered respondent to file a response to the petition.

Pending before the court is petitioner’s second motion to compel. In that motion, petitioner seeks a court order requiring the respondent in this action to return his legal materials to him. However, petitioner’s pending motion as well as his previous motion to compel indicate that the respondent in this action does not have control over petitioner’s legal materials. Specifically, according to petitioner himself, prison officials at Tallahatchie Correctional Facility where he was previously confined confiscated his legal materials, and prison officials where he is currently confined have requested his legal materials from Tallahatchie Correctional Facility but have not yet received them. Under these circumstances, it appears that petitioner’s most prudent

1 course of action would be to inquire with prison officials at his current place of confinement
2 whether they have since received his legal materials from Tallahatchie Correctional Facility. In
3 the meantime, as noted above, the court recently ordered respondent to file a response to his
4 petition. Respondent has not yet done so. Thus, petitioner is under no obligation to file anything
5 in this case at this time. Accordingly, the court will deny petitioner's motion.

6 Accordingly, IT IS HEREBY ORDERED that petitioner's motion to compel
7 (Doc. No. 34) is denied.

8 DATED: April 1, 2010.

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11 _____
12 DALE A. DROZD
13 UNITED STATES MAGISTRATE JUDGE

11 DAD:9
12 down3041.mtc(2)