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

ANDRE R. SCOTT,

Petitioner,

No. CIV S-10-0824 KJM P

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondents.

ORDER

_____ /
Petitioner is a state prison inmate who has filed a “request for toll of time,” but no other documents. It appears that petitioner is attempting to protect himself from untimeliness in a yet-to-be filed federal habeas petition. The court has the authority to stay a habeas petition so that the petitioner can exhaust state court remedies if the petitioner shows his claims are potentially meritorious and good cause for failure to exhaust earlier, but petitioner must file a petition with at least one exhausted claim. Rhines v. Weber, 544 U.S. 269, 277 (2005). In addition, petitioner must pay the filing fee or submit an application to proceed in forma pauperis.

IT IS THEREFORE ORDERED that:

1. Petitioner’s motion for tolling (Docket No. 1) is denied without prejudice;

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2. Petitioner is directed to submit an application for writ of habeas corpus, bearing the case number assigned to this action, along with a request to proceed in forma pauperis within thirty days of the date of this order;

3. The Clerk of the Court is directed to send petitioner the habeas form used by this district; and

4. The Clerk of the Court is directed to change the designation of this case to habeas corpus filed by a state prisoner.

DATED: April 22, 2010.


U.S. MAGISTRATE JUDGE

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