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

ALEXANDER LEES,

Petitioner,

No. CIV S-11-1422 DAD P

vs.

A. HEDGEPEETH, Warden,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has not, however, 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 either submit the appropriate affidavit in support of a request to proceed in forma pauperis or submit the appropriate filing fee.

In addition, petitioner will be directed to file an amended petition for a writ of habeas corpus if he wishes to proceed. In any amended petition he elects to file petitioner must clearly identify any appeals or collateral attacks he has pursued in state court following his underlying conviction and any what claims or issues he has raised in the state courts with respect to that conviction. In this regard, the court notes that on his form petition filed in this court petitioner has indicated that he filed a direct appeal from his conviction, however he has not

1 provided either the date of the state appellate court’s decision or the grounds or issues that he
2 raised on appeal. Petitioner has also indicated in his petition that he did not file any post-
3 conviction petitions in state court but, contrary to that response, he later asserts that he filed a
4 petition with the California Supreme Court.

5 In his amended petition filed with this court , petitioner must clearly identify the
6 claims or issues he raised in state court either on appeal or in state habeas proceedings.

7 Petitioner is forewarned that the exhaustion of state court remedies is a prerequisite to the
8 granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies
9 the exhaustion requirement by providing the highest state court with a full and fair opportunity to
10 consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270,
11 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.1986).

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

13 1. Petitioner shall submit, within thirty days from the date of service of this order,
14 an affidavit in support of his request to proceed in forma pauperis or the appropriate filing fee;
15 petitioner's failure to comply with this order will result in the dismissal of this action;

16 2. Petitioner’s petition for writ of habeas corpus (Doc. No. 1) is dismissed;

17 3. Petitioner is granted thirty days from the date of service of this order to file an
18 amended petition that complies with the requirements of the Federal Rules of Civil Procedure;
19 the amended petition must bear the docket number assigned this case and must be labeled
20 “Amended Petition;” petitioner must use the form petition provided by the Clerk of the Court and
21 answer each question in the form petition;

22 4. The Clerk of the Court is directed to send petitioner a copy of the in forma
23 pauperis form used by this district and the form petition for a writ of habeas corpus by a state
24 prisoner; and

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26 ////

1 5. Petitioner's failure to comply with this order will result in the dismissal of this
2 action.

3 DATED: June 8, 2011.

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

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