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

JAMES PAUL CROSS,

Petitioner,

No. CIV S-11-1801 CKD P

vs.

STATE OF CALIFORNIA,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus under 28 U.S.C. § 2254. He has paid the filing fee and consented to the jurisdiction of the magistrate judge under 28 U.S.C. § 636(c).

Prior to his filing the instant petition, petitioner instituted Civil Action No. 2:11-cv-1665 by filing a request for a sixty-day extension to submit a petition for writ of habeas corpus in the first instance; that is, he sought additional time without having already filed an initial pleading. On June 29, 2011, the court denied his motion for additional time without prejudice and informed petitioner that he had thirty days in which to file a petition or the action would be dismissed. See Civil Action No. 2:11-cv-1665 (Docket No. 4). The court instructed petitioner that “the petition must bear the docket number assigned to this case[.]” Id. at 2.

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1 On July 8, 2011, the court received a petition from petitioner. However,
2 petitioner did not include the case number of the previously filed case in which he had thirty days
3 to avoid dismissal. The petition therefore received a new case number and the Clerk of Court
4 opened a new case. In the meantime, no petition was recorded as filed in the first case, and on
5 August 9, 2011, the court recommended that the first-filed action be closed for petitioner's
6 apparent failure to prosecute. See Civil Action No. 2:11-cv-1665 (Docket No. 7). Petitioner
7 timely objected to that recommendation, arguing that he had in fact complied with the June 29
8 order by filing the unnumbered petition that triggered the opening of this case.

9 As a result of petitioner's failure to write the already existing case number on his
10 petition, the court is now presented with essentially duplicative actions. In such a circumstance,
11 this court ordinarily orders the later-filed petition to be re-filed in the first action and dismisses
12 the later action. There is no reason not to employ that practice here.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. The Clerk of Court is directed to re-file the instant petition in Civil Action No.
15 2:11-cv-1665 JAM CKD P.

16 2. The \$5.00 filing fee paid in this action shall be applied as the filing fee in
17 Civil Action No. 2:11-cv-1665 JAM CKD P.

18 3. This action is dismissed without prejudice as duplicative of Civil Action No.
19 2:11-cv-1665 JAM CKD P, and this case is closed.

20 Dated: November 9, 2011

21 
22 _____
23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

25 hm
26 cros1801.ord