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

JAMES GEORGE STAMOS, Jr.

Petitioner,

No. CIV S-11-2722 KJM CKD P

vs.

WARDEN – SALINAS VALLEY
STATE PRISON

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis.

Examination of the trust account documents and petitioner’s affidavit shows that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

Petitioner alleges that his right to appeal his conviction and his right to counsel on appeal were denied. However, petitioner does not adequately state any factual support for those allegations. “[A] claim for relief in habeas corpus must include reference to a specific federal constitutional guarantee, as well as a statement of the facts which entitle the petitioner to relief.”

1 Gray v. Netherland, 518 U.S. 152, 162-63 (1996); see also Rule 2(c), Rules Governing § 2254
2 Cases. The court cannot order the petition to be served unless it contains a statement of facts that
3 tells the respondent and the court what actions by a state court deprived petitioner of his right to
4 an appeal or his right to appellate counsel. Therefore, the court will dismiss the original petition
5 and allow petitioner an opportunity to submit an amended petition that sufficiently states the
6 factual bases of his claims.

7 If petitioner chooses to file an amended petition, the court will examine it
8 according to the same screening standards applied to his original petition. In addition, plaintiff is
9 informed that the court cannot refer to a prior pleading in order to make plaintiff's amended
10 petition complete. Local Rule 220 requires that an amended pleading be complete in itself
11 without reference to any prior pleading. This is because, as a general rule, an amended complaint
12 or petition supersedes the original. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once
13 petitioner files an amended petition, the original no longer serves any function in the case.
14 Therefore, in an amended petition, as in an original petition, each habeas claim and the factual
15 bases underlying it must be sufficiently and completely alleged.

16 Finally, petitioner is admonished that failure to submit an amended petition within
17 the time allowed by this order will result in a recommendation that the petition be dismissed
18 pursuant to Fed. R. Civ. P. 41(b).

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

- 20 1. Petitioner's request to proceed in forma pauperis (Docket No. 20) is granted.
- 21 2. The petition for writ of habeas corpus (Docket No.1) is dismissed, with leave
22 to amend. Petitioner has thirty days from the entry of this order in which to file an amended

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1 petition. If he submits an amended petition, he should label it "First Amended Petition" on the
2 first page.

3 Dated: November 29, 2011

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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE

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10 hm
11 stam2722.ord

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