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

CHARLES C. JAMES, JR.,

Petitioner,

No. 2:12-cv-2041 DAD P

vs.

WARDEN SINGH,

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, together with an application to proceed in forma pauperis.

Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

THE PETITION

On August 3, 2012, petitioner commenced this action by filing a petition for writ of habeas corpus with the court. Therein, petitioner challenges his prison disciplinary conviction for Battery on Correctional Staff. As a result of that disciplinary conviction, petitioner lost ninety days of good-time credits and received an 18-month segregated housing unit term. (Pet. at 2.)

1 **DISCUSSION**

2 After reviewing the petition filed in this action the court has determined that it
3 must be dismissed with leave granted to file an amended petition. Specifically, on the form
4 petition, petitioner has listed one claim for relief under the Eighth Amendment. Petitioner then
5 directs the court to the “Legal Authorities” he submitted with his petitions for writ of habeas
6 corpus filed with the Solano County Superior Court and California Supreme Court. However,
7 petitioner has not attached to his federal form petition copies of the petitions he filed with those
8 state courts. Petitioner has attached to his pending federal petition a copy of the petition he filed
9 with the California Court of Appeal, but the claims for relief he set forth therein are based on
10 alleged procedural due process and equal protection violations and not on any alleged Eighth
11 Amendment violation. In this regard, it is therefore not clear to the court whether petitioner
12 wishes to proceed on an Eighth Amendment claim for relief, Fourteenth Amendment claim for
13 relief, or both.

14 If petitioner chooses to proceed with this action by filing an amended federal
15 habeas petition, he must file it on the proper form provided by this court. Although petitioner
16 may submit a separate exhibits to support his petition, the court’s form petition must contain all
17 relevant claims and must provide the court with all necessary information. Petitioner should use
18 caution when piecing together his amended petition. As noted above, in his original petition
19 filed with this court, petitioner references petitions that he did not attach to his form federal
20 petition. Finally, in selecting which claims to include in his amended petition, petitioner is
21 reminded that exhaustion of state court remedies is a prerequisite to the granting of a petition for
22 writ of habeas corpus. 28 U.S.C. § 2254(b)(1). State courts must be given the first opportunity
23 to consider and address a state prisoner’s habeas corpus claims. See Rhines v. Weber, 544 U.S.
24 269, 273-74 (2005) (citing Rose v. Lundy, 455 U.S. 509, 518-19 (1982)); King v. Ryan, 564 F.3d
25 1133 (9th Cir. 2009) (“Habeas petitioners have long been required to adjudicate their claims in
26 state court - that is, ‘exhaust’ them - before seeking relief in federal court.”); Farmer v. Baldwin,

1 497 F.3d 1050, 1053 (9th Cir. 2007) (“This so-called ‘exhaustion requirement’ is intended to
2 afford ‘the state courts a meaningful opportunity to consider allegations of legal error’ before a
3 federal habeas court may review a prisoner’s claims.”) (quoting Vasquez v. Hillery, 474 U.S.
4 254, 257 (1986)). A petitioner satisfies the exhaustion requirement by fairly presenting to the
5 highest state court all federal claims before presenting the claims to the federal court. See
6 Baldwin v. Reese, 541 U.S. 27, 29 (2004); Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v.
7 Connor, 404 U.S. 270, 276 (1971); Wooten v. Kirkland, 540 F.3d 1019, 1025 (9th Cir. 2008).

8 **CONCLUSION**

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner’s application to proceed in forma pauperis (Doc. No. 2) is granted;
11 2. Petitioner is granted thirty days leave to file an amended petition;
12 3. Any amended petition must be filed on the form employed by this court and
13 must state all claims and prayers for relief on the form. It must bear the case number assigned to
14 this action and must bear the title “Amended Petition”; and
15 4. The Clerk of the Court is directed to send petitioner the form for habeas corpus
16 application.

17 DATED: August 20, 2012.

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20 _____
21 DALE A. DROZD
22 UNITED STATES MAGISTRATE JUDGE

20 DAD:9
21 jame2041.amd