

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

10 || JUSTIN MICHAEL LANGSTON,

Petitioner, No. 2:12-cv-2703 MCE GGH E

VS.

13 RON BARNES, Warden,

Respondent. ORDER

16 Petitioner, a state prisoner proceeding pro se, filed in the Ninth Circuit an
17 application for leave to file a second or successive petition for writ of habeas corpus pursuant to
18 28 U.S.C. § 2254. However, the Ninth Circuit transferred petitioner’s application to this district
19 court because petitioner stated that he had “not previously filed a petition for habeas corpus relief
20 in the district court,” noting that “[a]n application for a writ of habeas corpus must be made to
21 the district court. See Fed. R. App. P. 22(a); see also 28 U.S.C. § 2241(b).” Order at docket # 1-
22 1, pp. 1-2.

23 Petitioner appears to be challenging a 2008 Shasta County Superior Court
24 conviction for lewd and lascivious acts with a child under 14 (Cal. Pen. Code § 288a) and
25 furnishing marijuana to a minor (Cal. Health & Safety Code § 11361) on the ground that he
26 received ineffective assistance of counsel. Docket # 1, pp. 1, 5. However, petitioner's

1 application is not presented in a lucid manner, at least in part because he has not used the
2 appropriate form for filing a habeas corpus petition in this district. Filing his habeas application
3 on the correct form will eliminate any confusion as to which court the petition is directed and
4 allow petitioner the opportunity to present the basis for his challenge in the district court in an
5 organized fashion as well as provide clarity for the court on such questions as the precise length
6 of the sentence he received as a result of the subject conviction. The transferred application will
7 be dismissed with leave for petitioner to file his petition in this district court on the appropriate
8 form.

9 In addition, petitioner has also not filed an in forma pauperis affidavit or paid the
10 required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). Petitioner will be provided the
11 opportunity to either submit the appropriate affidavit in support of a request to proceed in forma
12 pauperis or submit the appropriate filing fee.

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

14 1. The petition is dismissed with leave to file a petition on the appropriate form
15 within thirty days from the date of service of this order;

16 2. Petitioner shall also submit, within thirty days from the date of this order, an
17 affidavit in support of his request to proceed in forma pauperis or the appropriate filing fee;

18 3. Petitioner's failure to comply with any portion of this order will result in
19 dismissal or a recommendation of dismissal of this action by the undersigned; and

20 4. The Clerk of the Court is directed to send petitioner both a copy of the
21 appropriate form for filing a habeas application under 28 U.S.C. § 2254 and the in forma
22 pauperis form for prisoners used by this district.

23 || DATED: November 27, 2012

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE