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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL LUJAN,
Petitioner,
v.
PLACER SUPERIOR COURT,
Respondent.

No. 2:13-cv-02205 DAD P

ORDER

Petitioner, an inmate at the Placer County Jail, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner failed to submit the filing fee or an application to proceed in forma pauperis. On November 1, 2013, this action was administratively closed in response to a letter received by the court from petitioner in which he indicated that he wished that this case to be closed. Now before the court is petitioner’s November 5, 2013 letter in which petitioner explains that he did not intend to dismiss this action but was instead requesting that his pending criminal case in state court be dismissed.

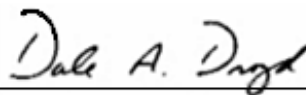
Petitioner is advised that a federal petition for a writ of habeas corpus is used to challenge a state conviction or judgment as violating the U.S. Constitution or federal laws. See Rule 1 of the Rules Governing Section 2254 Cases. A federal habeas action cannot be used to challenge a state criminal proceeding which is still pending. Furthermore, petitioner would be required to exhaust state court remedies before proceeding to federal court with a habeas action. See 28

1 U.S.C. § 2254(b)(1). Therefore, this federal habeas action is premature and will be summarily
2 dismissed should petitioner decide to proceed by submitting the filing fee or an application to
3 proceed in forma pauperis. See 28 U.S.C. §§ 1914(a); 1915(a).

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

- 5 1. Petitioner's November 5, 2013 request to reopen this case (ECF No. 5) is granted;
- 6 2. The Clerk of the Court is directed to re-open this action;
- 7 3. Petitioner shall submit, within thirty days from the date of this order, an affidavit in
8 support of his request to proceed in forma pauperis or the \$5.00 filing fee; in the alternative,
9 within thirty days from the date of this order, petitioner may submit a notice requesting that this
10 action be dismissed as premature;
- 11 4. Petitioner's failure to comply with this order will result in a recommendation that this
12 action be dismissed; and
- 13 5. The Clerk of the Court is directed to send petitioner a copy of the in forma pauperis
14 form used by this district.

15 Dated: November 8, 2013

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18 DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

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