

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE WALLACE,
Petitioner,
v.
RON E. BARNES,
Respondent.

No. 2:14-cv-0157-MCE-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner proceeding without counsel seeking a writ of habeas corpus. See 28 U.S.C. § 2254. On February 13, 2015, the court granted petitioner leave to amend his petition. ECF No. 50. After a seven month delay, petitioner finally filed an amended petition. ECF No. 60. The court directed respondent to file either an answer or motion in response to the amended petition. ECF No. 61. Respondent now moves to dismiss the amended petition solely on the ground that it includes references to the original petition, in violation of Local Rule 220. See E.D. Cal. Local Rule 220 (requiring that pleadings be complete in themselves, without reference to prior pleadings).

For the sake of efficiency, the Clerk of the Court is directed to docket the amended petition, along with the referenced pages in the original petition, as a “Second Amended Petition.” Respondent’s motion to dismiss should therefore be denied as moot and respondent should be directed to file a response to the Second Amended Petition.

1 The court notes that after filing the amended petition, petitioner moved “to expand the
2 record” with exhibits in support of his actual innocence claim. That filing shall also be included
3 with the “Second Amended Petition.” A fair reading of these documents, as so organized, places
4 respondent reasonably on notice as to what claims the petitioner is attempting to present and
5 enables respondent to fashion a meaningful response.

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall docket the
7 amended petition (ECF No. 60), along with pages 14-23 of the original petition (ECF No. 1), and
8 the motion to expand the record (ECF No. 63), together as a “Second Amended Petition.” The
9 Clerk shall also terminate docket number 63.

10 Further, IT IS HEREBY RECOMMENDED that respondent’s motion to dismiss (ECF
11 No. 64) be denied as moot and that respondent be directed to file a response to the Second
12 Amended Petition within 60 days of any order adopting this recommendation.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
18 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
19 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: October 19, 2015.

21 
22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28