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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID EDWARD FULLMORE,
Petitioner,
v.
MCDONALD,
Respondent.

No. 2:14-cv-614-EFB P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 5, 2014, petitioner filed a petition challenging a 2011 conviction in Sacramento County Superior Court for second degree robbery and false imprisonment. On July 17, 2014, petitioner commenced a new action by filing a second petition challenging the same 2011 conviction. See *Fullmore v. Holland*, No. 2:14-cv-1691-EFB, ECF No. 1. Applying Ninth Circuit precedent, the court ordered that the second petition be construed as a motion to amend the original petition. See ECF No. 15 at 1 (citing *Woods v. Carey*, 525 F.3d 886, 888-90 (9th Cir. 2008)). Respondent has filed nothing in response to the motion. For the reasons that follow, the motion is granted.

An application for a writ of habeas corpus “may be amended or supplemented as provided in the rules of procedure applicable to civil actions.” 28 U.S.C. § 2242. Federal Rule of Civil Procedure 15(a)(1) provides that “[a] party may amend its pleading once as a matter of course

1 within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is
2 required, 21 days after service of a responsive pleading or 21 days after service of a motion under
3 Rule 12(b), (e), or (f), whichever is earlier.” See also Fed. R. Civ. P. 15 Advisory Committee
4 Notes to 2009 Amendments (“[T]he right to amend once as a matter of course is no longer
5 terminated by service of a responsive pleading.”). Here, petitioner’s original petition was served
6 on respondent on April 2, 2014, ECF No. 6, and respondent served a responsive pleading on July
7 2, 2014, ECF No. 12-2. Petitioner, who is proceeding on his original petition, filed his motion to
8 amend on July 17, 2014. See *Fullmore v. Holland*, No. 2:14-cv-1691-EFB, ECF No. 1. Because
9 petitioner did not file his motion to amend until more than three months after serving his original
10 petition, he may not amend his petition as a matter of course under Rule 15(a)(1)(A). However,
11 petitioner filed the motion to amend just fifteen days after respondent served his responsive
12 pleading. Because petitioner sought amendment within twenty-one days after respondent served
13 a responsive pleading, petitioner may amend his petition as a matter of course under Rule
14 15(a)(1)(B).

15 Under Local Rule 220,

16 [E]very pleading to which an amendment or supplement is
17 permitted as a matter of right . . . shall be retyped and filed so that
18 it is complete in itself without reference to the prior or superseded
19 pleading. No pleading shall be deemed amended or supplemented
until this Rule has been complied with.

20 E.D. Cal. Local R. 220. Although petitioner’s motion describes the claim he intends to add to his
21 petition, he has not filed an amended petition that complies with Local Rule 220.

22 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion to amend (ECF No. 16)
23 is granted. Petitioner shall file an amended petition that complies with Local Rule 220 within
24 thirty (30) days from the date of service of this order.

25 DATED: January 12, 2015.

26 
27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE