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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FARAJI LAMONT LEE,
Petitioner,
v.
FRED FIGUEROA,
Respondent.

No. 2:14-cv-02724-MCE-AC

ORDER

On November 14, 2014, Petitioner Faraji Lamont Lee (“Petitioner”) commenced this action by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. In Findings and Recommendations dated June 17, 2015, the Magistrate Judge recommended that the Court dismiss the petition in light of Petitioner’s failure to file an in forma pauperis affidavit or pay the appropriate filing fee. ECF No. 6. Petitioner did not thereafter file objections to the Findings and Recommendations, file an in forma pauperis affidavit, or pay the appropriate filing fee. Accordingly, on July 21, 2015, the Court adopted the Findings and Recommendations in full and directed the Clerk of the Court to close this action. ECF No. 7.

On August 11, 2015, the Court received a letter from Petitioner. ECF No. 9. In that letter, Petitioner suggests that he did not learn of the Magistrate Judge’s recommended disposition until June 28, 2015, when he received the Court’s Order

1 adopting the Findings and Recommendations in full and closing this action. Petitioner
2 therefore requests an opportunity to file objections to the Findings and
3 Recommendations. In light of Petitioner's representations, the Court will vacate its July
4 21, 2015 Order and grant Plaintiff thirty days to either (1) file objections to the Findings
5 and Recommendations dated June 17, 2015, (2) file an in forma pauperis affidavit, or (3)
6 pay the appropriate filing fee.

7 The Court must note, however, that it has reviewed both the petition filed in this
8 action and the petition that Petitioner filed in case number 2:15-cv-01677-KJN. In both
9 actions, it appears that Plaintiff is not seeking habeas relief under 28 U.S.C. § 2254.
10 Rather, he appears to be requesting that his felony convictions be resentenced as
11 misdemeanors pursuant to California Proposition 47 (2014). See ECF No. 1 (invoking
12 Proposition 47 but not otherwise alleging that his custody is in violation of the
13 Constitution, laws, or treaties of the United States). Cf. 28 U.S.C. § 2254(a) ("a district
14 court shall entertain an application for a writ of habeas corpus in behalf of a person in
15 custody pursuant to the judgment of a State court only on the ground that he is in
16 custody in violation of the Constitution or laws or treaties of the United States."). If that
17 reading is correct, Petitioner has filed the wrong petition in the wrong court.

18 California Penal Code section 1170.18(a), which became effective upon the
19 passage of Proposition 47 in November 2014, provides:

20 A person currently serving a sentence for a conviction,
21 whether by trial or plea, of a felony or felonies who would
22 have been guilty of a misdemeanor under the act that added
23 this section ("this act") had this act been in effect at the time
24 of the offense may petition for a recall of sentence before the
25 trial court that entered the judgment of conviction in his or her
case to request resentencing in accordance with Sections
11350, 11357, or 11377 of the Health and Safety Code, or
Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal
Code, as those sections have been amended or added by
this act.

26 (emphasis added). Thus, if seeking relief under section 1170.18(a), Petitioner should file
27 a petition for recall of sentence in the trial court that entered the judgment of conviction
28 in his case (and not a petition for a writ of habeas corpus in this Court). Based on the

1 documents attached to the Petition filed in this action, Petitioner should file a petition for
2 recall of sentence in the Solano County Superior Court. See ECF No. 1 at 12 (a felony
3 complaint bearing Petitioner's name and filed in Solano County Superior Court).¹

4 Accordingly, the Court's July 21, 2015 Order (ECF No. 7) is hereby VACATED.
5 Within thirty (30) days of the date that this Order is electronically filed, Petitioner shall (1)
6 file objections to the Findings and Recommendations dated June 17, 2015 (ECF No. 6),
7 (2) file an in forma pauperis affidavit, or (3) pay the appropriate filing fee. The Clerk of
8 the Court is directed to send a copy of the Findings and Recommendations dated June
9 17, 2015 (ECF No. 6) to Petitioner.

10 IT IS SO ORDERED.

11 Dated: September 18, 2015

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15 MORRISON C. ENGLAND, JR., CHIEF JUDGE
16 UNITED STATES DISTRICT COURT
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¹ The Court expresses no opinion on whether Petitioner is eligible for resentencing under section 1170.18(a).