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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

OLIE EUGENE HENDRICKS,
Petitioner,
v.
DAVID LONG,
Respondent.

No. 2:15-cv-0564 GEB AC P

ORDER

Petitioner is a state prisoner proceeding pro se in this habeas corpus action filed February 13, 2015, pursuant to 28 U.S.C. § 2254. On April 23, 2015, the undersigned recommended that this action be dismissed as duplicative of petitioner’s action filed February 12, 2015, in Case No. 2:15-cv-0768 MCE AC P. See ECF No. 16 (findings and recommendations filed in the instant case). Petitioner thereafter filed a “Motion to Clarify Findings and Recommendations.” ECF No. 17.

In both actions, petitioner appears to challenge his current sentence imposed October 2011, on the ground that it was improperly enhanced by petitioner’s 1992 conviction entered upon a plea agreement. The court dismissed petitioner’s duplicative case on the ground that plaintiff’s claims are barred by the Supreme Court’s decision in Lackawanna County District Attorney v. Coss, 532 U.S. 394 (2001), because petitioner’s 1992 conviction and resulting sentence are fully expired. See Case No. 2:15-cv-0768 MCE AC P, ECF Nos. 11, 12. Petitioner

1 did not file objections to this ruling.

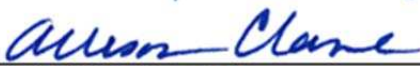
2 In petitioner's motion to clarify filed in the instant case, petitioner attempts to draw a
3 distinction between his duplicative cases filed in this court.¹ Petitioner appears to assert that he
4 intentionally filed two separate petitions in order to independently challenge his 2011 conviction
5 and his 1992 conviction. See ECF No. 17 at 2 ("Petitioner is challenging his prior conviction,
6 also the conviction he is now serving time on."). Nevertheless, petitioner remains precluded from
7 challenging the merits of his 1992 plea agreement, conviction and/or sentence.

8 In an abundance of caution, the undersigned will vacate the pending findings and
9 recommendations, grant petitioner's request to proceed in forma pauperis, and accord petitioner
10 leave to file an amended petition that clarifies the matters he is challenging.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The findings and recommendations filed April 23, 2015, ECF No. 16, are vacated.
- 13 2. Petitioner's motion to clarify, ECF No. 17, is granted.
- 14 3. Petitioner's motion to proceed in forma pauperis, ECF No. 7, is granted.
- 15 4. Petitioner's original petition for writ of habeas corpus filed in this action, ECF No. 6, is
16 dismissed with leave to file an amended petition.
- 17 5. Petitioner may, within thirty (30) days after the filing date of this order, file an
18 amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.
- 19 6. The Clerk of Court is directed to send petitioner, together with a copy of this order, a
20 blank petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

21 DATED: August 13, 2015

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE

25 _____
26 ¹ As noted by petitioner, both cases were originally filed in the United States District Court for
27 the Northern District of California, and transferred to this court. The instant action, Case No.
28 2:15-cv-0564 GEB AC P, was originally designated Case No. 5:15-cv-0690 LHK P in the
Northern District; while Case No. 2:15-cv-00768 MCE AC P was designated Case No. 4:15-cv-
0661 KAW P in the Northern District.