

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

JERMAINE BARKLEY,
Petitioner,
v.
JOE LIZARRAGA,
Respondent.

No. 2:15-cv-0655 AC P

ORDER

Petitioner, a state prisoner at Mule Creek State Prison, has filed a motion to stay his petition for writ of habeas corpus. ECF No. 1. No petition has been filed, however. Without a petition on file, there is nothing to stay.

In order to commence an action, petitioner must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases, and he must either pay the filing fee (\$5.00) or submit an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). The court cannot issue any orders granting or denying relief until an action has been properly commenced. Therefore, petitioner’s motion to stay will be denied without prejudice.

Petitioner will be provided an opportunity to file a petition and submit an application to proceed in forma pauperis or the appropriate filing fee. The court is cognizant of petitioner’s efforts to obtain his legal files in paper rather than electronically, and aware that this continuing delay impacts petitioner’s ability to be thorough in his petition. Petitioner must nevertheless

1 complete and file a petition for writ of habeas corpus, to the best of his present ability, in order to
2 commence this action. He may then renew his request to stay this action and/or request leave to
3 file an amended petition in the future when he has obtained all his files.

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

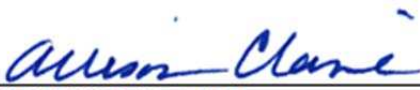
5 1. Petitioner's March 23, 2015 motion, ECF No. 1, is denied without prejudice.

6 2. Petitioner is granted thirty days from the filing date of this order to file a petition that
7 complies with the requirements of the Rules Governing Section 2254 Cases, the Federal Rules of
8 Civil Procedure, and the Local Rules of Practice; the petition must bear the docket number
9 assigned this case. Petitioner shall also submit, within thirty days from the filing date of this
10 order, an application to proceed in forma pauperis on the form provided herewith, or the filing fee
11 in the amount of \$5.00.

12 3. Petitioner's failure to comply with this order will result in a recommendation that this
13 matter be dismissed without prejudice.

14 4. The Clerk of the Court is directed to send petitioner the court's form for filing a
15 petition for writ of habeas corpus under 28 U.S.C. § 2254, and an application to proceed in forma
16 pauperis by a prisoner.

17 DATED: April 2, 2015

18 
19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
21
22
23
24
25
26
27
28