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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE ELLIS WALLACE,
Petitioner,
v.
C.E. DUCART,
Respondent.

No. 2:16-cv-1522 KJN P

ORDER

Petitioner is a state prisoner, proceeding without counsel. On August 23, 2016, the undersigned ordered petitioner to show cause why this action should not be dismissed based on his failure to comply with the July 18, 2016 order. On August 24, 2016, petitioner’s August 19, 2016 motion to proceed in forma pauperis and certified trust account statement were entered on the court’s docket. Therefore, the order to show cause is discharged.

In the instant petition, petitioner challenges his December 10, 2010 conviction. However, court records reflect that petitioner is presently challenging his December 10, 2010 conviction in another pending action. Wallace v. Barnes, 2:14-cv-0157 MCE EFB (E.D. Cal.). It is established that if a new petition is filed when a previous habeas petition is still pending before the district court without a decision having been rendered, then the new petition should be construed as a motion to amend the pending petition. Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008). However, the Woods holding will not be extended to a situation where the district court has ruled


1 on the initial petition, and proceedings have begun in the Court of Appeals. Beaty v. Schriro, 554
2 F.3d 780, 782-83 & n.1 (9th Cir. 2009), cert. denied, 558 U.S. 832 (2009).

3 Petitioner's case, 2:14-cv-0157 MCE EFB, is pending, and the district court has not yet
4 ruled on the initial petition. Therefore, the petition filed in the instant action should be construed
5 as a motion to amend his initial petition, and filed in 2:14-cv-0157 MCE EFB. Woods, 525 F.3d
6 at 888.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The August 23, 2016 order to show cause is discharged;
- 9 2. The July 5, 2016 petition (ECF No. 1) should be construed as a motion to amend and
10 filed in petitioner's initial habeas action, 2:14-cv-0157 MCE EFB; and
- 11 3. The Clerk of the Court is directed to file the petition (ECF No. 1) in Case No. 2:14-cv-
12 0157 MCE EFB, and to terminate this action.

13 Dated: September 8, 2016

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16 KENDALL J. NEWMAN
17 UNITED STATES MAGISTRATE JUDGE

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