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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ALAN GIBBS,
Petitioner,
v.
SHASTA COUNTY,
Respondent.

No. 2:16-cv-1958 JAM GGH P

ORDER

PROCEDURAL BACKGROUND

Petitioner, a Shasta County inmate proceeding in pro se filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on August 18, 2016. ECF No. 1. That filing was accompanied by neither an application to proceed in forma pauperis nor a payment of the filing fee. The court, therefore undertook to screen Petitioner’s application to consider whether to dismiss it as frivolous pursuant to 28 U.S.C. § 1915(d). After an examination of the record, the court determined that the present petition was virtually identical to an August 8, 2016 petition filed against the same respondent. See 2:15-cv-1869 JAM KJM. The court therefore found the petition frivolous and recommended that the application be dismissed without prejudice. See F. R. Civ. P. 41(b). ECF No. 3. The findings and recommendations were submitted to the Judge assigned to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1), and advised petitioner that he may file written objections within fourteen days after being served and that failure to file

1 objections within the specified time may waive his right to appeal the District Court's Order.
2 ECF No. 3. The Clerk of the Court entered a notice that the findings and recommendations were
3 served on petitioner on August 25, 2016.

4 No objections were received. However on August 31, 2016 Petitioner filed a Motion to
5 Consolidate the above-captioned matter with other "recently filed habeas" petitions which he
6 identified at 2:16-cv-01668 GEB AC, 2:16-cv-01670 JAM AC, 2:16:1868 TLN EFB, 2:16-cv-
7 1958 GGH and 2:16-cv-01869 KJN. ECF No. 5. This court signed an order denying the Motion
8 to Consolidate as moot on September 13, 2016, ECF No. 6, finding that the court in the lead case,
9 Gibbs v. Boyd, Civ. No. 2:13-2631 KJM CMK denied a previous Motion to Consolidate. Id.

10 On September 26, 2016 United States District Judge John A. Mendez issued an Order that
11 adopted the foregoing Findings and Recommendations and dismissed the Petition without
12 prejudice. ECF No. 8. Judgement was entered pursuant to that Judge Mendez's Order on the
13 same date. ECF No. 9. Judge Mendez's Order and the Judgment were served on plaintiff by mail
14 on September 26, 2016.

15 On October 3, 2016 filed an "Objection to Order, Notice of Non-Service, Objection to
16 Findings and Recommendations," claiming that he had never received those Findings and
17 Recommendations and requesting reservice of them so that he might respond. ECF No. 10.

18 CONCLUSION

19 Although the record in this case reflects that the Findings and Recommendations were
20 served by mail to the same address as Petitioner reflects on his Objection, Etc., it is not
21 inconceivable that the document did not find its way to him at the Shasta County Jail. Therefore
22 the court, in the interests of assuring due process of law, orders as follows:

- 23 1. Petitioner's motion is construed as one pursuant to F. R. Civ. P. 60(b)(6).
- 24 2. The Findings and Recommendations at issue (ECF 3) as well as the Order, (ECF
25 5) be re-served on petitioner;
- 26 3. Petitioner may file Objections to the Findings and Recommendations within 14
27 days of the service of the foregoing documents; the objections will be considered briefing
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1 pertinent to whether the court should reopen this closed case; failure to timely file objections may
2 result in a denial of the Rule 60(b) motion.

3 Dated: October 6, 2016

4 /s/ Gregory G. Hollows
5 UNITED STATES MAGISTRATE JUDGE
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