

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

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

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

FINDINGS AND RECOMMENDATIONS

Petitioner is a Shasta County inmate proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This action was dismissed and judgment entered on September 26, 2016. On October 3, 2016, petitioner filed objections, stating that he had never received the findings and recommendations. That filing was construed as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6), and petitioner was permitted to file objections within 14 days of receiving re-service of the findings and recommendations. The order stated that the objections would “be considered briefing pertinent to whether the court should reopen this closed case...” Petitioner has now filed objections. (ECF No. 12).

Petitioner states that he does not object to dismissal of this action if he is permitted to amend his habeas petition in case number 16-cv-1869 JAM KJN. Petitioner’s objections do not warrant vacating the judgment. Petitioner is informed that this referenced case has been terminated, the petition in it having been construed as a motion to amend and placed in his first

1 filed habeas action, case number 2:16-cv-1629 JAM DB. The undersigned did not construe the
2 petition in this action as a motion to amend under Woods v. Carey, 525 F.3d 886, 888 (9th Cir.
3 2008), as it was in case number 16-cv-1869, because the instant petition contained virtually
4 identical allegations to the petition in Gibbs v. Shasta County, No. 2:16-cv-1869 JAM KJN and
5 was therefore found to be duplicative of that case.¹ Petitioner is informed that if he seeks to
6 amend his petition, he should file a motion to amend in the lead case, Gibbs v. Attorney General
7 of California, No. 2:16-cv-1629 JAM DB.

8 Accordingly, IT IS HEREBY RECOMMENDED that: petitioner’s filing, (ECF No. 10),
9 construed as a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6), be denied.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
12 (14) days after being served with these findings and recommendations, petitioner may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 “Objections to Magistrate Judge’s Findings and Recommendations.” Petitioner is advised that
15 failure to file objections within the specified time may waive the right to appeal the District
16 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: October 27, 2016

18 /s/ Gregory G. Hollows
19 UNITED STATES MAGISTRATE JUDGE

20
21
22
23 GGH:076/gibb1958.60b
24
25
26

27 _____
28 ¹ Case number 2:16-cv-1869 JAM KJN had not been closed at the time of this court’s findings.