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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOUGLAS SCOTT McFARLAND,  
Petitioner,  
v.  
STATE OF CALIFORNIA,  
Respondent.

No. 2:16-cv-2568-EFB P

ORDER

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 6, 2016, the court dismissed this action because petitioner failed to pay the filing fee or seek leave to proceed in forma pauperis. ECF No. 6. On December 16, 2016, petitioner filed a notice of change of address, and the Clerk of the Court re-served petitioner with the order of dismissal. ECF No. 8. On February 6, 2017, petitioner filed a request for an extension of time along with a “declaration of illiteracy” and an application for leave to proceed in forma pauperis. ECF Nos. 9, 10. Construed as a motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, and good cause appearing, petitioner’s request for an extension of time will be granted.

A judge “entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.”

1 28 U.S.C. § 2243. It is not apparent from the face of the application that petitioner is not entitled  
2 to relief. Further, examination of the in forma pauperis affidavit reveals that petitioner is unable  
3 to afford the costs of suit.

4 Accordingly, it is hereby ordered that:

- 5 1. Petitioner's request for an extension of time, construed as a motion for relief from  
6 judgment pursuant to Rule 60(b) (ECF No. 9), is granted.
- 7 2. The Clerk is directed to reopen the case.
- 8 3. Petitioner's request for leave to proceed in forma pauperis (ECF No. 10) is granted.
- 9 4. Respondent shall file and serve either an answer or a motion in response to petitioner's  
10 application within 60 days from the date of this order. *See* Rule 4, Rules Governing §  
11 2254 Cases. Any response shall be accompanied by any and all transcripts or other  
12 documents relevant to the determination of the issues presented in the application. *See*  
13 Rules 4, 5, Rules Governing § 2254 Cases.
- 14 5. Petitioner's reply, if any, shall be filed and served within 30 days of service of an  
15 answer.
- 16 6. If the response to petitioner's application is a motion, petitioner's opposition or  
17 statement of non-opposition shall be filed and served within 30 days of service of the  
18 motion, and respondent's reply, if any, shall be filed within 14 days thereafter.
- 19 7. The Clerk of the Court shall serve a copy of this order together with a copy of  
20 petitioner's petition for writ of habeas corpus (ECF No. 1) with any and all  
21 attachments on Michael Patrick Farrell, Senior Assistant Attorney General for the  
22 State of California. The Clerk of the Court also shall serve on the Senior Assistant  
23 Attorney General the consent form used in this court.

24 Dated: February 9, 2017.

25   
26 EDMUND F. BRENNAN  
27 UNITED STATES MAGISTRATE JUDGE  
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