

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

STEVE WILHELM, aka Steven Hairl
Wilhelm,

Petitioner,

v.

JEFFREY A. BEARD,

Respondent.

No. 2:18-cv-00720-GGH

ORDER and FINDINGS AND
RECOMMENDATIONS

PROCEDURAL HISTORY

Petitioner filed his petition for writ on April 2, 2018, ECF No. 1, along with a petition to proceed In Forma Pauperis. ECF No. 2. On April 17, 2018 this court issued an Order granting in forma pauperis status to petitioner, dismissing the petition with leave to amend to assert a civil action complaint in conformity with directions included in the Order. ECF No. 6. On May 17, 2018 petitioner filed a Motion to Expedite Judgment, ECF No. 8, which the court concluded indicated that he had not received the former Order and therefore it issued a new Order directing the Clerk of the Court to reserve ECF No. 6 on the petitioner at his new place of incarceration and directed petitioner to file an amended complaint to assert a civil action within 45 days of the date of the Order. ECF No. 9.

1 On June 13, 2018, petitioner filed document entitled "Motion to Correct an Error" in
2 which he expressed confusion regarding the foregoing court orders stating that the Order found in
3 ECF Nos. 6 and 9 referred to a different case than the one pending which he purports to have filed
4 on August 27, 2017. ECF No. 10. In response the court filed and served yet another Order
5 making clear that the court's docket reflects no filing on August 27, 2017, and iterating that if
6 petitioner wished to proceed with an action in this court he would have to refile a new petition but
7 remained bound by the instructions found in ECF No. 9 to continue with this case, the only one
8 actually pending in the court. ECF No. 11. No further filings have been received by the court.

9 *CONCLUSION*

10 Petitioner has failed to follow the Orders of this court as catalogued above. In light of that
11 failure the court has no alternative but to dismiss the pending action for pursuant to Federal Rule
12 of Civil Procedure 41(b) for failure to prosecute and to comply with the court's orders.

13 Accordingly, IT IS HEREBY ORDERED and RECOMMENDED that:

- 14 1. The petition for a writ of habeas corpus should be dismissed without leave to
15 amend pursuant to Federal Rule of Civil Procedure 41(b);
- 16 2. No Certificate of Appealability should be issued;
- 17 3. The Clerk of the Court should close this case.
- 18 4. The Clerk of the Court shall randomly assign a United States District Court Judge
19 to this case and forward these Findings and Recommendations to him or her upon assignment
20 pursuant to the provisions of 28 U.S.C. § 636(b)(1).

21 Within fourteen days after being served with these findings and recommendations,
22 petitioner may file written objections with the court. Such a document should be captioned
23 "Objections to Magistrate Judge's Findings and Recommendations." The petitioner is advised
24 that failure to file objections within the specified time may waive the right to appeal the District
25 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 Dated: September 3, 2018

27 /s/ Gregory G. Hollows
28 UNITED STATES MAGISTRATE JUDGE