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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KANE MICHAEL THOMPSON,
Petitioner,
v.
M.E. SPEARMAN,
Defendant.

No. 2:20-cv-0726 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1)(B).

For the reasons stated below, the court shall direct the Clerk of Court to file the original petition filed this matter, herein referred to as “Thompson II,” as petitioner’s first amended petition (“FAP”) in his earlier-filed action, Thompson v. Spearman, No. 2:19-cv-2328 KJM DB P (“Thompson I”). Thereafter, under separate orders in the two respective actions, the court shall: (1) vacate the pending findings and recommendations to dismiss in the Thompson I matter; (2) recommend that the Thompson II matter be dismissed as duplicative, and (3) address the deficiencies in the Thompson I FAP.

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1 **I. RELEVANT PROCEDURAL HISTORY**

2 On April 13, 2020, in the instant action, the court directed petitioner either to file an
3 application to proceed in forma pauperis or to pay the appropriate filing fee. (See Thompson II,
4 ECF No. 3). Petitioner was given thirty days within which to do so.

5 Thereafter, on May 7, 2020, petitioner filed a letter with the court indicating his intent to
6 file an in forma pauperis application with the court. (Thompson II, ECF No. 4). In it, petitioner
7 also stated that he was having difficulty getting the form completed due to the COVID-19
8 pandemic. (See id.). Petitioner did not, however, provide the court with a date certain by which
9 he believed he would be able to file the application. (See id.). Ultimately, an in forma pauperis
10 application was never filed by petitioner.

11 On August 24, 2020, the court issued an order recommending that this action be
12 dismissed. (Thompson II, ECF No. 5). Petitioner has filed objections to the court's order.
13 (Thompson II, ECF No. 6). In the filing, petitioner references extension of time and in forma
14 pauperis-related court orders he has received which have confused him. (See id.). He also asserts
15 that he timely filed an in forma pauperis application and that he has also filed an amended
16 petition. (See id.). Nevertheless, he asks the court to send him another application, and he asks
17 for a thirty-day extension of time to file it. (See id.).

18 **II. DISCUSSION**

19 Based upon petitioner's representations to the court, it has conducted a search of its
20 database of matters. In so doing, it has determined that petitioner has two actions in this court
21 that are currently open. (See Thompson I, ECF No. 1; see also Thompson II, ECF No. 1). The
22 first-filed action – Thompson I – was opened with this court on November 18, 2019, and the
23 instant action – Thompson II – was opened on April 8, 2020. It appears that the cases have
24 become conflated, in part, because petitioner failed to put case numbers on some of the

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1 documents he filed with the court.¹ (See, e.g., Thompson I, ECF Nos. 13, 14; see also Thompson
2 II, ECF No. 1).

3 In the earlier-filed Thompson I, on March 3, 2020, petitioner was ordered to file an
4 amended petition and to do so within thirty days. (Thompson I, ECF No. 12). Thereafter, on
5 April 8, 2020, petitioner filed a petition with the court. (See Thompson II, ECF No. 1).
6 However, it appears that because petitioner neither wrote the case number of Thompson I on the
7 April 2020 pleading, nor identified it as an amended petition, the matter was filed in this court as
8 a new action. That action is the instant Thompson II. (See Thompson II, ECF No. 1 at 1). The
9 fact that Thompson I and Thompson II ultimately raise the same claims which arise from the
10 same conviction and sentence supports these findings. (Compare Thompson I, ECF No. 1, with
11 Thompson II, ECF No. 1).

12 In light of the above, the petition filed in the instant action on April 8, 2020, is effectively
13 what the court shall now construe as the FAP that petitioner should have filed in Thompson I.
14 Consequently, the Clerk of Court shall be directed to file it in Thompson I and identify it on that
15 docket as petitioner's FAP.

16 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall:

- 17 1. File the original petition in this action in the case named Thompson v. Spearman, No.
18 2:19-cv-2328 KJM DB, and
- 19 2. Label the petition filed in Thompson v. Spearman, No. 2:19-cv-2328 KJM DB
20 "Petitioner's First Amended Petition" on that case's docket.

21 Dated: September 10, 2020

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24 
25 DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

24 DLB:13
25 DB/ORDERS/ORDERS.PRISONER.HABEAS/thom0726.fap2328

26 _____
27 ¹ Petitioner is reminded that it is his responsibility, not the court's, both to keep track of the cases
28 he has filed with the court and to make certain that he puts case numbers on the documents he
submits to it. Doing so not only enables petitioner to avoid the confusion and time lost he has
experienced to date; it also preserves this court's extremely finite resources.