

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAM GRAY,

Petitioner,

vs.

WALKER, Warden,

Respondent.

No. C 07-4964 WHA (PR)

**ORDER REOPENING CASE;
DISMISSAL WITH LEAVE TO
AMEND**

Petitioner sent the court a document asking for an enlargement of time to file a federal habeas petition. In an effort to protect petitioner's rights, the document was treated as commencing a new case. The clerk sent petitioner a notice informing him that he had failed to pay the five-dollar filing fee or apply for leave to proceed in forma pauperis. A copy of the court's form for applications to proceed in forma pauperis was provided with the notice, along with a return envelope. Petitioner was informed that if he did not either pay the fee or file the application within thirty days the case would be dismissed. When the time expired with no response, the case was dismissed.

Petitioner has moved to reconsider the dismissal and reopen the case. His motion, which is filed under penalty of perjury, is sufficient to establish that he tried to provide an in forma pauperis application. It is not clear why it was not received, but one of the exhibits he has provided, a log of outgoing "Special Purpose Letters," shows a letter at about the right time addressed to the "US Court of Appeals[,], 450 Golden Gate Blvd[,], San Francisco[,], CA 94102."

1 It might be that misnaming this court as the "Court of Appeals," rather than the United States
2 District Court, caused the letter to go astray. In any event, it is clear that petitioner tried to file
3 an application, and furthermore he has now paid the five-dollar filing fee. The motion to
4 reconsider the dismissal and reopen the case will be granted.

5 Because the document with which petitioner commenced this case is not on the court's
6 form for Section 2254 habeas petitions, it will be dismissed with leave to amend on the form.
7 When petitioner has filed an amended petition the court will review it to determine if an order to
8 show cause should issue.

9 **CONCLUSION**

10 1. Petitioner's motion to reconsider (document number 6 on the docket) is **GRANTED**.
11 The clerk shall reopen the case.

12 2. The petition is **DISMISSED** with leave to amend within thirty days from the date this
13 order is entered. The amendment must be on the court's form for prisoner section 2254
14 petitions and must include the caption and civil case number used in this order and the words
15 AMENDED PETITION on the first page. The form is available in the law library of
16 petitioner's institution. Failure to amend within the designated time will result in the dismissal
17 of the case.

18 3. It is petitioner's responsibility to prosecute this case. Petitioner must keep the court
19 informed of any change of address and must comply with the court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
21 Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: March 6, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE