

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
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVELL WILLIS,

No. C 08-2484 MHP (pr)

Petitioner,

ORDER OF DISMISSAL

v.

FOLSOM STATE PRISON,

Respondent.

This pro se habeas action was opened on May 14, 2008 when the court received from petitioner a request to appoint counsel for a habeas action. No habeas petition accompanied the request for counsel. On May 14, 2008, a form was sent to petitioner that notified him of the case number that had been assigned to his action, notified him that he had not attached a petition to his other filing, and cautioned that his action would be dismissed if he did not submit a complaint or petition within thirty days. On May 21, 2008, another form was sent to petitioner notifying him that he had to pay the filing fee or file an in forma pauperis application. Petitioner has not responded to either notice and has filed nothing since his request for appointment of counsel. The notices sent to him have not been returned undelivered.

Without a habeas petition or other pleading on file, the court cannot do an initial evaluation of the action regarding threshold considerations such as venue, timeliness and exhaustion. See Rules Governing Section 2254 Cases In The United States District Courts, Rule 4. The inability of the court to do an initial evaluation also prevents any informed consideration of the request for appointment of counsel. The request for appointment of

1 counsel therefore is DENIED. (Docket # 1.)

2 This action is DISMISSED without prejudice because petitioner never filed an initial
3 pleading. See Fed. R. Civ. P. 3; Rules Governing Section 2254 Cases In The United States
4 District Courts, Rules 1-3. This action is DISMISSED for the additional reason that
5 petitioner never paid the filing fee or applied to proceed in forma pauperis.

6 The clerk shall close the file.

7 IT IS SO ORDERED.

8 Dated: September 26, 2008


Marilyn Hall Patel
United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28