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FILED
OCT 22 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RYAN CARTER,
Petitioner,
v.
D. K. SISTO, warden,
Respondent.

No. C 08-3593 MHP (pr)
ORDER

INTRODUCTION

Ryan Carter, an inmate at the California State Prison - Solano, filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition is now before the court for review pursuant to 28 U.S.C. §2243 and Rule 4 of the Rules Governing Section 2254 Cases. His in forma pauperis application also is before the court for consideration.

BACKGROUND

Carter states in his petition that he was convicted in the Alameda County Superior Court of one count of pandering and two counts of rape. He states that he was sentenced on June 10, 2004, to a term of 15 years in prison. He did not appeal his conviction, according to his petition. He filed state habeas petitions; those petitions were pending in part of 2007 and part of 2008.

Carter then filed this action, seeking a writ of habeas corpus. His petition has a signature date of July 21, 2008, was mailed in an envelope postmarked July 22, 2008, and was stamped "filed" in this court on July 28, 2008.

1 the Rules Governing Section 2254 Cases In The United States District Courts, respondent
2 must either (1) move to dismiss the petition on the ground that it is untimely, or (2) inform
3 the court that respondent is of the opinion that a motion to dismiss is unwarranted in this
4 case.

5 **CONCLUSION**

6 Good cause appearing therefor,

7 1. The clerk shall serve by certified mail a copy of this order and the petition upon
8 respondent and respondent's attorney, the Attorney General of the State of California. The
9 clerk shall also serve a copy of this order on petitioner.

10 2. Respondent must file with the court and serve upon petitioner, on or before
11 **December 12, 2008**, a motion to dismiss the petition or a notice that respondent is of the
12 opinion that a motion to dismiss is unwarranted.

13 3. If petitioner wishes to oppose the motion to dismiss, he must do so by filing an
14 opposition with the court and serving it upon respondent on or before **January 16, 2009**.


15 4. Respondent may file and serve a reply on or before **February 6, 2009**.

16 5. The motion will be deemed submitted as of the date the reply brief is due. No
17 hearing will be held on the motion. If respondent notifies the court that a motion to dismiss
18 is unwarranted or the motion to dismiss is decided against respondent, the court will then
19 determine whether to require an answer to the petition.

20 6. Petitioner's in forma pauperis application is DENIED because he has sufficient
21 funds to pay the \$5.00 filing fee. (Docket # 2.) Petitioner must pay the \$5.00 filing fee on or
22 before **December 12, 2008**, or this action will be dismissed.

23 IT IS SO ORDERED.

24 DATED: October 27, 2008

25 
Marilyn Hall Patel
26 United States District Judge
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RYAN CARTER,

Plaintiff,

v.

D.K. SISTO et al,

Defendant.

Case Number: CV08-03593 MHP


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 23, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Ryan Carter V-41333
California State Prison-Solano
P.O. Box 4000
Vacaville, CA 95696

Dated: October 23, 2008


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk