

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

TOM RUTLEDGE,

Petitioner, No. CIV S-08-2576 DAD P

VS.

UNKNOWN,

**Respondent.** ORDER

Petitioner, a state prisoner proceeding pro se, filed two letters with the court inquiring about the one-year statute of limitations for the filing of a federal petition for writ of habeas corpus under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). No other pleadings had been filed by the petitioner. Nonetheless, out of an abundance of caution, the Clerk of the Court opened a habeas action based upon the filings.

The court advised petitioner that, in order to proceed with a federal habeas action, he must file a petition for writ of habeas corpus as required by Rule 3 of the Rules Governing Section 2254 cases, and petitioner must either pay the required filing fee or file an application requesting leave to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a), 1915(a). The court also advised petitioner that, assuming he wished to challenge his judgment of conviction, the statute of limitations typically begins to run ninety days after the California Supreme Court's

1 order disposing of his petition for review. 28 U.S.C. § 2244(d)(1)(A). However, “[t]he time  
2 during which a properly filed application for State post-conviction or other collateral review with  
3 respect to the pertinent judgment or claim is pending shall not be counted” toward the AEDPA  
4 statute of limitations. 28 U.S.C. § 2244(d)(2). Petitioner indicated in his letters that he was  
5 currently pursuing a second round of state habeas petitions. The court cautioned petitioner that if  
6 he was concerned about the AEDPA statute of limitations and its application to his claims, he  
7 could file a “mixed” petition containing both exhausted and unexhausted claims, together with a  
8 request for a stay and abeyance in order to allow him to exhaust his unexhausted claims.

9                   In accordance with the court’s order, petitioner has filed a “mixed” petition,  
10 together with a request for a stay and abeyance. He has also filed an application to proceed in  
11 forma pauperis.

12                   In his petition, petitioner now makes clear that he is challenging a judgment of  
13 conviction entered in the Alameda County Superior Court. While both this Court and the United  
14 States District Court in the district where petitioner was convicted have jurisdiction, see Braden  
15 v. 30th Judicial Circuit Court, 410 U.S. 484 (1973), any and all witnesses and evidence necessary  
16 for the resolution of petitioner’s application are more readily available in Alameda County. Id. at  
17 499 n.15; 28 U.S.C. § 2241(d).

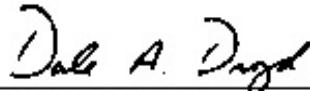
18                   Accordingly, in the furtherance of justice, IT IS HEREBY ORDERED that:

19                   1. This court has not ruled on petitioner’s application to proceed in forma  
20 pauperis (Doc. No. 7); and

21                   2. This matter is transferred to the United States District Court for the Northern  
22 District of California.

23 DATED: December 16, 2008.

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26 DAD:9  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE