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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re.

No. C 10-2596 SI (pr)

DAVID JOHNSON, JR.,

**ORDER OF DISMISSAL**Petitioner.  

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On May 6, 2010, David Johnson filed a “petition for declaratory relief” that was construed to be a habeas petition (because it challenged the execution of his sentence), and was assigned to Judge Jeffrey White. See Johnson v. Coalinga State Prison, No. C 10-1958 JSW. That action was transferred to the Eastern District of California on November 17, 2010, where it was assigned a new case number, Johnson v. Coalinga State Prison, E.D. Cal. No. 10-cv-2150 SMS.

On June 11, 2010, this action was filed when Johnson sent in a “petition for declaratory relief and request for extension of time,” addressed to Judge Henderson. Due to a clerical error at the court, the document was construed to be a new civil rights action and was assigned to the undersigned. (The document was construed to be a new civil rights action because the first page of it discussed a problem Johnson had experienced with a correctional officer who wanted to remove staples and paper clips from his legal materials.) Johnson later filed a “petition for declaratory relief and informal response” (docket # 4) in which he expressed confusion as to why a new case number was assigned, mentioned his desire to challenge the length of his sentence and requested an extension of time to exhaust administrative remedies. Later still, he filed an “ex parte petition for declaratory relief” (docket # 5) to allow him an extension of time to

1 exhaust administrative remedies about his sentencing problem, which was the subject of his  
2 earlier filed action. Upon review of the several filings by petitioner as well as his petition in the  
3 earlier filed action, it is clear he did not intend to file a new civil rights action and this action  
4 should not have been opened.


5 For the foregoing reasons, this action is DISMISSED because it was opened in error. No  
6 further filings should be made in this action because it is now closed. To the extent petitioner  
7 wants any relief with regard to his sentence or his challenge to his sentence (including an  
8 extension of time), he should file such requests in his case that is now pending in the Fresno  
9 division of the Eastern District of California, Johnson v. Coalinga State Prison, E.D. Cal. No.  
10 10-cv-2150 SMS.

11 Because the case was opened due to an error at the courthouse, no fee is due. The motion  
12 to proceed in forma pauperis is DISMISSED. (Docket # 4.)

13 The clerk shall close the file.

14 IT IS SO ORDERED.

15 DATED: December 3, 2010

  
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SUSAN ILLSTON  
United States District Judge

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