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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BILL BUNN,

Petitioner,

No. C 09-0251 PJH (PR)

vs.

WARDEN SALINAS VALLEY STATE
PRISON,

Respondent.

**ORDER REOPENING CASE,
GRANTING PETITIONER'S
MOTION TO TREAT LETTER
AS MOTION TO RECONSIDER
AND DENYING HIS MOTION
FOR LEAVE TO AMEND**

This is a habeas case filed pro se by a state prisoner. The petition was dismissed with leave amend in the initial review order. The deadline for amending, after the court granted petitioner's request for an extension, was January 21, 2010. On February 4, 2010, the clerk received and docketed the amendment. On February 11, 2010, the court dismissed the case. On March 4, 2010, the court received a letter from petitioner dated February 18, 2010, noting the dismissal and asking if the court had not received his amendment. The letter was accompanied by another copy of the amended petition.

Petitioner has moved to treat the March 4 letter as a motion to reconsider. He also moves for leave to amend and has provided a proposed amended petition.

Although the court was incorrect that no amendment had been received by the time the order dismissing the case was entered, the error does not alter the fact that petitioner did not amend in time, if the February 4 date of receipt is the relevant date. But under the "prison mailbox rule," a pro se prisoner's federal habeas petition is deemed filed when the prisoner delivers the petition to prison authorities for mailing. *Saffold v. Newland*, 250 F.3d 1262, 1268 (9th Cir. 2001), *vacated and remanded on other grounds*, *Carey v. Saffold*, 536 U.S. 214 (2002). There is no reason an amendment should be treated any differently. The

1 court will assume for purposes of this ruling that the mailbox rule also applies to amended
2 petitions.

3 The amended petition at issue here – the one received on February 4, 2010 --
4 carries a postmark of January 29, 1010, which was after the deadline. However, the
5 petition itself is dated January 2, 2010, and the certificate of service attached to it is dated
6 January 4, 2010. The discrepancy is unexplained.

7 Under the mailbox rule, proof of the date of mailing may be by a notarized statement
8 or by a declaration from the prisoner setting forth the date of deposit and stating that
9 first-class postage has been prepaid. *Koch v. Ricketts*, 68 F.3d 1191, 1193 (9th Cir.
10 1995). Here, the certificate of mailing attached to the February 4 petition is insufficient to
11 serve that purpose, because in it petitioner has listed only the attorney general of California
12 as a recipient, not this court. Because petitioner is pro se, he will be afforded a chance to
13 amend his motion to reconsider to include a declaration (a statement signed under penalty
14 of perjury) that provides the date of mailing for the February 4 petition.

15 **CONCLUSION**

16 The clerk shall reopen this case. Petitioner’s motion to treat his March 4 letter as a
17 motion to reconsider (document number 18 on the docket) is **GRANTED**. Petitioner is
18 granted until September 16, 2011, to supplement the letter/motion with a declaration
19 establishing when the February 4 amendment was mailed. No extensions will be granted.
20 His motion for leave to amend (document 19) is **DENIED** because it is not yet clear whether
21 the case will be allowed to proceed. If the motion to reconsider is granted, petitioner may
22 renew the motion to amend.

23 **IT IS SO ORDERED.**

24 Dated: September 13, 2011.



PHYLLIS J. HAMILTON
United States District Judge