

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
28

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SATURNINO PRADO,

No. C 10-04049 SBA (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

BRENDA E. VARGAS,

Defendant.

On September 9, 2001, this case was opened as a civil rights action when Plaintiff, a state prisoner, filed a letter dated August 20, 2010. On the same date, the Clerk of the Court informed Plaintiff that his action could not go forward until he submitted a completed civil rights complaint form. The Clerk also sent him a notice that he had failed to pay the \$350.00 filing fee or apply for leave to proceed in forma pauperis.

Upon reviewing Plaintiff's letter, the Court now determines that Plaintiff intended for this letter to have been filed in his previous action, Case No. C 10-982 JSW (PR). On page three of his letter, Plaintiff informs the Court that he received an Order in Case No. C 10-982 JSW (PR). The Court notes that the Honorable Jeffrey S. White dismissed Case No. C 10-982 JSW (PR) on June 21, 2010 because Plaintiff challenged his "conviction in front of Los Angeles County Superior Court Judge Alice Altoon" and "improperly filed his claim as a civil rights action." (June 21, 2010 Order in Case No. C 10-982 JSW (PR) at 2.) According to the June 21, 2010 Order: "A prisoner must bring a habeas petition if the nature of his claim is such that it would necessarily imply the invalidity of his conviction or continuing confinement." (Id.)

Plaintiff has since filed a habeas corpus action in Case No. C 10-3613 JSW (PR). On October 5, 2010, that habeas action has been transferred because Plaintiff sought federal habeas review of his conviction from Los Angeles County, which lies within the venue of the Central District of California.

Accordingly, the Clerk is directed to remove Plaintiff's letter from this action, to file it in his previously-filed action, Case No. C 10-0982 JSW (PR), and to docket it as Plaintiff's "Letter dated

1 August 20, 2010." The Clerk is further directed to mark it as filed on September 9, 2010, the date it
2 was received by the Court. The present action is DISMISSED because it was opened in error. No
3 filing fee is due. The Clerk shall close the file.

4 IT IS SO ORDERED.

5 DATED: 12/6/10


6 SAUNDRA BROWN ARMSTRONG
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SATURNINO PRADO,
5 Plaintiff,

Case Number: CV10-04049 SBA

CERTIFICATE OF SERVICE

6 v.

7 US DISTRICT COURT et al,
8 Defendant.

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

11 That on December 8, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Saturnino Prado P-98312
16 California State Prison-Sacramento
17 P.O. Box 290066
18 Represa, CA 95671

19 Dated: December 8, 2010

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk