## Everett v. McDonad

Doc. 5

1	IN THE UNITED STATES DISTRICT COURT
2	FOR THE NORTHERN DISTRICT OF CALIFORNIA
3	JAMAL T. EVERETT, No. C 12-1410 CW (PR)
4	Petitioner, ORDER DISMISSING CASE;
5	v. DIRECTING CLERK TO REFILE PETITION IN
6	CASE NO. C 10-4323 CW (PR) M. D. McDONALD, Warden,
7	Respondent.
8	/

The Clerk of the Court erroneously opened this case when 10 Petitioner filed a document entitled, "Petition for Writ of Habeas 11 Corpus," which is related to his other pending action, Everett v. 12 Specifically, Petitioner's other 13 McDonald, No. C 10-4323 CW (PR). pending action is a habeas action that has been stayed pending 14 15 Petitioner's exhaustion of state remedies. Petitioner has been directed in that action to keep the Court apprised of the status of 16 his exhaustion efforts in state court. 17 The petition filed in the 18 present case is a copy of a petition that Petitioner intended to 19 file in the California Supreme Court; Petitioner explains in a 20 letter attached to the petition that he is sending the petition to 21 this Court to show that he is in the process of exhausting state remedies.<sup>1</sup> 22

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24 1 In his letter, filed March 20, 2012, Petitioner inquires whether the California Supreme Court is the last court in which he 25 is required to file his habeas petition to exhaust his previously The Court cannot provide Petitioner with legal unexhausted claims. 26 advice. The Court notes, however, that prisoners in state custody who wish to challenge collaterally in federal habeas proceedings either the fact or length of their confinement are first required 27 to exhaust state judicial remedies, either on direct appeal or 28 through collateral proceedings, by presenting the highest state

Accordingly, the Court directs the Clerk to refile all of the documents currently filed in Case No. C 12-1410 CW (PR) in Case No. C 10-4323 CW (PR). The Petition for Writ of Habeas Corpus (docket no. 1) and attached correspondence and exhibits (docket no. 2) should be filed as a "Status Report." This case is DISMISSED because it was opened in error. No filing fee is due. The Clerk shall close the file. IT IS SO ORDERED. Dated: 4/17/2012 UNITED STATES DISTRICT JUDGE court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. U.S.C. § 2254(b), (c); <u>Rose v. Lundy</u>, 455 U.S. 509, 515 (1982).

United States District Court For the Northern District of California