

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DEMETRIUS GATER,

Petitioner,

v.

A. HEDGPETH, Warden, et al.,

Respondents.

Civil No. 10cv0967-MMA (WMc)

ORDER:

**(1) CONSTRUING NOTICE OF
INQUIRY AS REQUEST TO REOPEN
PROCEEDINGS;**

**(2) DENYING REQUEST TO REOPEN
PROCEEDINGS; AND**

**(3) DIRECTING CLERK TO ENTER
FINAL JUDGEMENT DISMISSING
PETITION WITHOUT PREJUDICE**

On May 3, 2010, Petitioner, a state prisoner proceeding pro se, submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner neither paid the filing fee nor filed a motion to proceed in forma pauperis.

On May 13, 2010, the Court dismissed the Petition because Petitioner had failed to satisfy the filing fee requirement. (Doc. No. 2.) Petitioner was informed that if he wished to proceed with this matter he had to either pay the filing fee or file a motion to proceed in forma pauperis on or before July 12, 2010. (Id. at 5.) Petitioner was also notified that, because he had alleged exhaustion of state court remedies as to some but not all claims in the Petition, it was subject to dismissal as a “mixed” petition. (Id.) Petitioner was notified of his options to avoid a future

1 dismissal on that basis in the event he satisfied the filing fee requirement and had the case
2 reopened. (Id.) Petitioner was informed that if he wished to proceed with this action he was
3 required, in addition to satisfying the filing fee requirement, to notify the Court of which option
4 he chose on or before July 12, 2010. (Id. at 2-5.)

5 Petitioner filed a Supplemental Memorandum Regarding Exhaustion on July 1, 2010, in
6 which he attempted to demonstrate complete exhaustion by submitting selected pages from the
7 state court decisions denying his claims. (Doc. No. 4.) Petitioner did not, however, pay the
8 filing fee or file a motion to proceed in forma pauperis, and has still not done so. Thus, this case
9 has remained dismissed.

10 Petitioner has now filed a Notice to Inquire About Petitioner's Federal Habeas Corpus
11 and Notice of Change of Address, indicating that although he has complied with the Court's May
12 13, 2010, Order by submitting documentation supporting exhaustion, he has not heard back from
13 the Court regarding his case. (Doc. No. 5.) The Court will construe Petitioner's Notice of
14 Inquiry as a Request to Reopen the case.

15 Petitioner's request to reopen the case is **DENIED**. The deadline for Petitioner to satisfy
16 the filing fee requirement expired over a year ago. It is clear that Petitioner received the Court's
17 May 13, 2010, Order because he responded to the options notification portion of that Order.
18 Yet, Petitioner has made no attempt to satisfy the filing fee requirement and has waited over a
19 year before inquiring about the status of his case. This matter remains **DISMISSED**. The
20 dismissal is without prejudice to Petitioner to present his claims in a new habeas petition which
21 will be assigned a new civil case number. The Clerk of Court shall enter a final judgement of
22 dismissal without prejudice in this case.

23 **IT IS SO ORDERED.**

24
25 DATED: August 23, 2011



26 Hon. Michael M. Anello
27 United States District Judge

28 Copies to: ALL PARTIES