

EXHIBIT COVER PAGE

A-2

EXHIBIT

Description of this Exhibit: Notice from 9th Circuit Concerning Briefing
Schedule For Case No. 23-15874 (sister petition) Not Being Set until coa issue
Resolved

Number of pages in this Exhibit: 2 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

EXHIBIT COVER PAGE

4-1

EXHIBIT

Description of this Exhibit: Notice From 9th Circuit Concerning Briefing
Schedule Not Being Set Until COA Issue Resolved (Instant Action)

Number of pages in this Exhibit: 2 pages

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

EXHIBIT COVER PAGE

1

EXHIBIT

Description of this Exhibit: Copy of POR / Incident Report for allegation
of "Attempted Manufacture of a Deadly Weapon"

Number of pages in this Exhibit: 26 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

EXHIBIT COVER PAGE

A-3

EXHIBIT

Description of this Exhibit: Copy of Order Dismissing Case No. 23-158
77 Based On Lack of Jurisdiction

Number of pages in this Exhibit: 2 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

23-15877

Lawrence Christopher Smith; #F-29502
PBSP - PELICAN BAY STATE PRISON
P.O. Box 7500
Crescent City, CA 95532-7500

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 26 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LAWRENCE CHRISTOPHER SMITH,

Petitioner-Appellant,

v.

KEN CLARK, Warden,

Respondent-Appellee.

No. 23-15877

D.C. No.

1:21-cv-01554-JLT-EPG

Eastern District of California,

Fresno

ORDER

Before: TALLMAN, N.R. SMITH, and COLLINS, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the May 25, 2023, magistrate judge order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *In re San Vicente Med. Partners Ltd.*, 865 F.2d 1128, 1131 (9th Cir. 1989) (order) (magistrate judge order not final or appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

EXHIBIT COVER PAGE

A-4

EXHIBIT

Description of this Exhibit: Copy of Order Denying Mandamus Relief
In 9th Circuit Case No. 23-70707 (Secretary) as Order which Errantly Cites
Sister Petitions Case No. See also ECF No. 5 in Secretary

Number of pages in this Exhibit: 3 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

23-70107

Lawrence Christopher Smith, #F-29502
PBSP - PELICAN BAY STATE PRISON
P.O. Box 7500
Crescent City, CA 95532-7500

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 25 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: LAWRENCE CHRISTOPHER
SMITH.

No. 23-70107

D.C. No. 21-cv-1554-JLT-EPG
Eastern District of California,
Sacramento

LAWRENCE CHRISTOPHER SMITH,

Petitioner,

ORDER

v.

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
CALIFORNIA, SACRAMENTO,

Respondent,

KEN CLARK, Warden,

Real Party in Interest.

Before: TALLMAN, N.R. SMITH, and COLLINS, Circuit Judges.

Petitioner has not demonstrated a clear and indisputable right to the extraordinary remedy of mandamus. *See In re Mersho*, 6 F.4th 891, 897 (9th Cir. 2021) (“To determine whether a writ of mandamus should be granted, we weigh the five factors outlined in *Bauman v. United States District Court*.”); *Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition, as amended, is denied.

No further filings will be entertained in this closed case.

DENIED.

EXHIBIT B

EXHIBIT COVER PAGE B-1

EXHIBIT

Description of this Exhibit: Copy of the Dist. of Court Order
Dismissing The Action

Number of pages in this Exhibit: 9 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

Lawrence Christopher Smith F-29502
CALIFORNIA STATE PRISON, CORCORAN (3476)
P.O. BOX 3476
CORCORAN, CA 93212-3476

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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 LAWRENCE CHRISTOPHER SMITH,

11 Petitioner,

12 v.

13 KEN CLARK,

14 Respondent.
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No. 1:21-cv-01346-JLT-EPG (HC)

**ORDER DENYING MOTION TO RECUSE,
DENYING MOTION TO AMEND,
ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF
COURT TO CLOSE CASE, AND
DECLINING TO ISSUE CERTIFICATE
OF APPEALABILITY**

(Docs. 18, 23, 24)

18 **I. BACKGROUND**

19 The magistrate judge issued findings and recommendations recommending that the
20 petition for writ of habeas corpus be denied. (Doc. 23.) Petitioner filed objections, moved to
21 amend the petition (Doc. 24), and lodged an amended petition. (Doc. 25.)

22 **II. DISCUSSION**

23 **A. Motion to Disqualify**

24 Petitioner moves for the undersigned to recuse herself pursuant to 28 U.S.C. § 144¹ and 28
25

26 ¹ "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the
27 judge before whom the matter is pending has a personal bias or prejudice, either against him or in favor of any
28 adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such
proceeding." 28 U.S.C. § 144.

1 U.S.C. § 455.² (Doc. 18.) “The substantive standard for recusal under 28 U.S.C. § 144 and 28
2 U.S.C. § 455 is the same: ‘[W]hether a reasonable person with knowledge of all the facts would
3 conclude that the judge’s impartiality might reasonably be questioned.’” *United States v.*
4 *Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (alteration in original) (quoting *United States v.*
5 *Studley*, 783 F.2d 934, 939 (9th Cir. 1986)). “Importantly, ‘[p]arties cannot attack a judge’s
6 impartiality on the basis of information and beliefs acquired while acting in his or her judicial
7 capacity.’” *United States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012) (alteration in original)
8 (quoting *United States v. Frias-Ramirez*, 670 F.2d 849, 853 n.6 (9th Cir. 1982)). As the Supreme
9 Court has recognized, “judicial rulings alone almost never constitute a valid basis for a bias or
10 partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). And “opinions formed by
11 the judge on the basis of facts introduced or events occurring in the course of the current
12 proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion
13 unless they display a deep-seated favoritism or antagonism that would make fair judgment
14 impossible.” *Id.* “Thus, judicial remarks during the course of a trial that are critical or
15 disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a
16 bias or partiality challenge.” *Id.*; accord *United States v. Wilkerson*, 208 F.3d 794, 799 (9th Cir.
17 2000) (“To disqualify a judge, the alleged bias must constitute animus more active and deep-
18 rooted than an attitude of disapproval toward certain persons because of their known conduct.”
19 (internal quotation marks and citation omitted)).

20 A judge “must not simply recuse out of an abundance of caution when the facts do not
21 warrant recusal. Rather, there is an equally compelling obligation not to recuse where recusal in
22 not appropriate.” *United States v. Sierra Pac. Indus.*, 759 F. Supp. 2d 1198, 1200–01 (E.D. Cal.
23 2010). “Frivolous and improperly based suggestions that a judge recuse should be firmly
24 declined.” *Maier v. Orr*, 758 F.2d 1578, 1583 (Fed. Cir. 1985). The decision regarding
25 disqualification is to be made by the judge whose impartiality is at issue. *In re Bernard*, 31 F.3d
26 842, 843 (9th Cir. 1994); *United States v. Studley*, 783 F.2d 934, 940 (9th Cir. 1986).

27 ² A judge is required to disqualify herself “in any proceeding in which [her] impartiality might reasonably be
28 questioned.” 28 U.S.C. § 455(a). A judge shall also disqualify herself “[w]here [s]he has a personal bias or prejudice
concerning a party[.]” 28 U.S.C. § 455(b)(1).

1 The bases for Petitioner's motion for recusal are the undersigned's judicial rulings and
2 actions in Petitioner's prior cases. These rulings in other cases do not bear on the objectivity and
3 impartiality of the Court. There is no evidence of any impropriety in the record and the Court's
4 actions in this matter or in Petitioner's prior cases do not even suggest such any degree of
5 favoritism or antagonism that might warrant recusal. *See Liteky*, 510 U.S. at 555. Therefore, the
6 undersigned will not recuse herself.

7 **B. Motion to Amend**

8 On October 27, 2022, Petitioner filed objections to the findings and recommendation and
9 moved to amend the petition. (Doc. 24.) That same day, Petitioner lodged an amended petition.
10 (Doc. 25.) A party may amend its pleading once as a matter of course within 21 days after serving
11 it, or "if the pleading is one to which a responsive pleading is required, 21 days after service of a
12 responsive pleading." Fed. R. Civ. P. 15(a)(1). But "[i]n all other cases, a party may amend its
13 pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P.
14 15(a)(2). *See Mayle v. Felix*, 545 U.S. 644, 655 (2005) (noting Fed. R. of Civ. P. 15 is applicable
15 to habeas proceedings).

16 Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2).
17 However, the Court may decline to grant leave to amend "if there is strong evidence of 'undue
18 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies
19 by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance
20 of the amendment, [or] futility of amendment, etc.'" *Sonoma Cty. Ass'n of Retired Employees v.*
21 *Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting *Foman v. Davis*, 371 U.S. 178, 182
22 (1962)). "Futility alone can justify a court's refusal to grant leave to amend." *Novak v. United*
23 *States*, 795 F.3d 1012, 1020 (9th Cir. 2015) (citing *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.
24 1995)).

25 Petitioner claims that when he drafted the original petition he "was ill from the
26 debilitating effects of anemia . . . which is known to affect cognitive abilities." (Doc. 24 at 1.)
27 Petitioner appears to contend that his original petition is somehow deficient because he drafted it
28 while suffering from anemia. However, after reviewing both the original petition and the lodged

1 amended petition, the Court cannot discern any notable change in substance between the two—
2 the proposed amended petition raises the same claims, arguments, and facts. The amended
3 petition merely appears to reword and reorganize the claims and arguments.

4 The proposed amended petition is substantively identical to the original petition. Given
5 that the original petition has been fully briefed, the amended petition makes no substantive
6 change and findings and recommendations on the merits have been issued, the Court **DENIES**
7 Petitioner's motion to amend.

8 **C. Adoption of Findings and Recommendations**

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
10 *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's
11 objections, the Court holds the findings and recommendation to be supported by the record and
12 proper analysis. The magistrate judge correctly concluded that the claims do not have merit; the
13 objections do not call these conclusions into question. The findings and recommendations will be
14 adopted in full, and the Petition will be dismissed.

15 **D. Certificate of Appealability**

16 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
17 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
18 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
19 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C.
20 § 2253. If a court denies a habeas petition on the merits, the court may only issue a certificate of
21 appealability "if jurists of reason could disagree with the district court's resolution of [the
22 petitioner's] constitutional claims or that jurists could conclude the issues presented are adequate
23 to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529
24 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he must
25 demonstrate "something more than the absence of frivolity or the existence of mere good faith on
26 his . . . part." *Miller-El*, 537 U.S. at 338.

27 In the present case, the Court finds that reasonable jurists would not find the Court's
28 determination that the petition should be denied debatable or wrong, or that Petitioner should be

1 allowed to proceed further. Petitioner has not made the required substantial showing of the denial
2 of a constitutional right. Therefore, the Court will decline to issue a certificate of appealability.

3 **III. ORDER**

4 Accordingly, the Court **ORDERS**:

- 5 1. Petitioner's motion to recuse (Doc. 18) is **DENIED**.
6 2. Petitioner's motion to amend (Doc. 24) is **DENIED**.
7 3. The findings and recommendations issued on October 12, 2022 (Doc. 23) are
8 **ADOPTED IN FULL**.
9 4. The petition for writ of habeas corpus is **DENIED**.
10 5. The Clerk of Court is directed to close the case.
11 6. The Court declines to issue a certificate of appealability.

12
13 IT IS SO ORDERED.

14 Dated: **December 13, 2022**


UNITED STATES DISTRICT JUDGE

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Message-Id: Subject:Activity in Case 1:21-cv-01346-JLT-EPG (HC) Smith v. Clark . Content-Type:
text/html

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U.S. District Court

Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 12/13/2022 at 8:29 AM PST and filed on 12/13/2022

Case Name: (HC) Smith v. Clark

Case Number: 1:21-cv-01346-JLT-EPG

Filer:

WARNING: CASE CLOSED on 12/13/2022

Document Number: 27

Docket Text:

ORDER DENYING Motion to Recuse, DENYING Motion to Amend, ADOPTING [23] Findings and Recommendations, DENYING Petition for Writ of Habeas Corpus, DIRECTING Clerk of Court to CLOSE CASE, and DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY signed by District Judge Jennifer L. Thurston on 12/13/2022. (Sant Agata, S)

1:21-cv-01346-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, diane.boggess@doj.ca.gov,
docketingSACAWT@doj.ca.gov, ECFCoordinator@doj.ca.gov, tracy.sabella@doj.ca.gov

1:21-cv-01346-JLT-EPG Electronically filed documents must be served conventionally by the filer to:

Lawrence Christopher Smith
F-29502
CALIFORNIA STATE PRISON, CORCORAN (3476)
P.O. BOX 3476
CORCORAN, CA 93212-3476

The following document(s) are associated with this transaction:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

LAWRENCE CHRISTOPHER SMITH,

CASE NO: 1:21-CV-01346-JLT-EPG

v.

KEN CLARK,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 12/13/2022**

Keith Holland
Clerk of Court

ENTERED: December 13, 2022

by: /s/ S. Sant Agata
Deputy Clerk

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Lawrence Christopher Smith
F-29502
CALIFORNIA STATE PRISON, CORCORAN (3476)
P.O. BOX 3476
CORCORAN CA 93212-3476

--Case Participants: Justain Paul Riley (diane.boggess@doj.ca.gov, docketingsacawt@doj.ca.gov, ecfcoordinator@doj.ca.gov, justain.riley@doj.ca.gov, tracy.sabella@doj.ca.gov), Magistrate Judge Erica P. Grosjean (aredner@caed.uscourts.gov, egrosjean@caed.uscourts.gov, jdimino@caed.uscourts.gov, jlee@caed.uscourts.gov, mbillman@caed.uscourts.gov, mrooney@caed.uscourts.gov), District Judge Jennifer L. Thurston (caed_cmecf_jlt@caed.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id: Subject:Activity in Case 1:21-cv-01346-JLT-EPG (HC) Smith v. Clark Judgment.

Content-Type: text/html

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*****NOTE TO PUBLIC ACCESS USERS***** *Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.*

U.S. District Court

Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 12/13/2022 at 8:29 AM PST and filed on 12/13/2022

Case Name: (HC) Smith v. Clark

Case Number: 1:21-cv-01346-JLT-EPG

Filer:

WARNING: CASE CLOSED on 12/13/2022

Document Number: 28

Docket Text:

JUDGMENT dated *12/13/2022* pursuant to [27] order. (Sant Agata, S)

1:21-cv-01346-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, tracy.sabella@doj.ca.gov, ecfcoordinator@doj.ca.gov, docketingsacawt@doj.ca.gov, diane.boggess@doj.ca.gov

1:21-cv-01346-JLT-EPG Electronically filed documents must be served conventionally by the filer to:
Lawrence Christopher Smith
F-29502
CALIFORNIA STATE PRISON, CORCORAN (3476)
P.O. BOX 3476
CORCORAN CA 93212-3476

EXHIBIT COVER PAGE

B-2

EXHIBIT

Description of this Exhibit: Copy of The District Court Order Denying
Rule 60 Relief

Number of pages in this Exhibit: 8 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

Lawrence Christopher Smith F-29502
PELICAN BAY STATE PRISON (7500)
P.O. Box 7500
Crescent City, CA 95532-7500

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LAWRENCE CHRISTOPHER SMITH,

12 Petitioner,

13 v.

14 KEN CLARK,

15 Respondent.
16

No. 1:21-cv-01346 JLT EPG (HC)

ORDER DENYING PETITIONER'S
MOTION TO BE RELIEVED OF
RULING/JUDGMENT

(Doc. 29)

17 Lawrence Christopher Smith is a state prisoner proceeding *pro se* with a petition for writ
18 of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner now seeks relief from
19 judgment pursuant to Federal Rule of Civil Procedure 60(b)(3). (Doc. 29.)

20 **I. BACKGROUND**

21 Petitioner was charged with several crimes arising out of four incidents that occurred
22 while he was an inmate at Corcoran State Prison. *People v. Smith*, No. F076167, 2020 WL
23 2520062, at *1 (Cal. Ct. App. May 18, 2020). On July 5, 2017, Petitioner was convicted by a jury
24 in the Kern County Superior Court of three counts of obstructing/resisting an executive officer
25 (counts 1, 3, 6); aggravated battery on a state prison officer (count 2); two counts of being a
26 prisoner in possession of a weapon (counts 4, 7); and manufacturing a sharp instrument while in
27 prison (count 5). (7 CT¹ 1838–51.) On August 2, 2017, Petitioner was sentenced to six

28 ¹ “CT” refers to the Clerk’s Transcript on Appeal lodged by Respondent. (Doc. 12.)

1 consecutive imprisonment terms of twenty-five years to life on counts 1, 2, 3, 4, 6, and 7. The
2 court stayed execution of the twenty-five years to life term as to count 5. (7 CT 1911–13.)

3 On May 18, 2020, the California Court of Appeal, Fifth Appellate District, conditionally
4 reversed the judgment and directed the trial court to disclose to Petitioner certain information
5 pertaining to two internal affairs investigations and to give Petitioner “a reasonable opportunity to
6 investigate the disclosed material and determine whether it would have led to any relevant and
7 admissible evidence he could have presented at trial.” *Smith*, 2020 WL 2520062, at *18. “If
8 [Petitioner] can demonstrate a reasonable probability of a different outcome had the evidence
9 been disclosed, the trial court must order a new trial. If [Petitioner] cannot, the judgment is to be
10 reinstated.” *Id.* In all other respects, the judgment was affirmed. *Id.* On August 12, 2020, the
11 California Supreme Court denied Petitioner’s petition for review. (LDs² 2 5, 6.) On April 30,
12 2021, Petitioner elected not to pursue a motion for new trial and requested that the judgment be
13 reinstated. (LD 7.) Subsequently, Petitioner filed multiple state habeas petitions, which were all
14 denied. (LDs 8–15.)

15 Petitioner filed a federal habeas petition, raising the following claims: (1) unreasonable
16 search and seizure; (2) false evidence; (3) judicial bias; and (4) selective prosecution. (Doc 1.)
17 Respondent filed an answer, and Petitioner filed a traverse and supplemental traverse. (Docs. 11,
18 21, 22.) On October 12, 2022, the magistrate judge issued Findings and Recommendations,
19 recommending that the petition be denied. (Doc. 23.) On October 27, 2022, Petitioner filed
20 objections and moved to amend the petition. (Doc. 24.) That same day, Petitioner lodged an
21 amended petition. (Doc. 25.) On December 13, 2022, the Court denied Petitioner’s motion to
22 amend, adopted the Findings and Recommendations, and denied the petition. (Doc. 27.) Judgment
23 was entered the same day. (Doc. 28.)

24 On January 6, 2023, Petitioner filed the motion for relief from judgment pursuant to
25 Federal Rule of Civil Procedure 60(b)(3), which is now pending before the Court. (Doc. 29.) On
26 January 12, 2023, Respondent filed a response. (Doc. 30.)

27 ///

28 ² “LD” refers to the documents lodged by Respondent. (Doc. 12.)

II. LEGAL STANDARD

Rule 60(b) of the Federal Rules of Civil Procedure provides:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic) misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Petitioner moves for relief from judgment pursuant to Rule 60(b)(3), which “permits a losing party to move for relief from judgment on the basis of fraud, misrepresentation, or other misconduct of an adverse party.” *Trendsetta USA, Inc. v. Swisher Int’l, Inc.*, 31 F.4th 1124, 1136 (9th Cir.) (citation, internal quotation marks omitted), *cert. denied*, 143 S. Ct. 486 (2022). “To prevail, the moving party must prove by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense.” *Id.* (citation and internal quotation marks omitted). “Rule 60(b)(3) is aimed at judgments which were unfairly obtained, not at those which are factually incorrect . . .” *Id.* (citation and internal quotation marks omitted).

III. DISCUSSION

In the instant matter, Petitioner challenged his 2017 Kern County convictions for crimes he committed while incarcerated. (Doc. 1.) In another pending habeas petition filed in this Court, Petitioner challenges his 2021 Kings County convictions for crimes he committed while incarcerated. (Petition, *Smith v. Clark*, No. 1:21-cv-01554-AWI-EPG, Doc. 1.) Petitioner alleges that on or around November 17, 2022, prison staff held an envelope earmarked for the Court’s

1 attention for 27 days, supposedly on the basis of insufficient postage. Petitioner contends that the
2 timing of the prison staff's action in holding the envelope for 27 days, in addition to the
3 opposition of the motion to amend the sister petition and the allegations in the motion for
4 contempt proceedings³ in Case No. 1:21-cv-01554-AWI-EPG, support Petitioner's "position that
5 the Courts dismissal of the Petition was a finding which the Respondent fraudulently obtained."
6 (Doc. 29 at 2.)

7 The Court finds that Petitioner has not established by clear and convincing evidence that
8 the judgment was obtained through fraud, misrepresentation, or other misconduct or that the
9 conduct complained of prevented Petitioner from fully and fairly presenting his case. The three
10 documents contained in the envelope that held by prison were: (1) a motion to consolidate
11 petitions (Case No. 1:21-cv-1554-AWI-EPG); (2) a proposed traverse (Case No. 1:21-cv-1346-
12 JLT-EPG); and (3) a motion to withdraw pleadings (both cases). (Doc. 29 at 2.) The Court notes
13 the proposed traverse appears to have been filed on November 21, 2022. (*Compare* Doc. 29 at 8-
14 42 *with* Doc. 26.) Notably, Petitioner had previously filed a traverse and supplemental traverse,
15 (Docs. 21, 22), which were considered by the Court, (Doc. 23 at 2), and the Court had not
16 authorized the filing of a second supplemental traverse. In the motion to withdraw pleadings,
17 Petitioner sought to withdraw his prior motion to amend asserting "the proper course of action for
18 [Petitioner] to have taken is to have sought to consolidate the current petition(s) [Petitioner has]
19 before the Court and ... then filing a reply to the Respondent's answers in one pleading[.]" (Doc.
20 29 at 7.) However, "[a] petitioner who seeks relief from judgments of more than one state court
21 must file a separate petition covering the judgment or judgments of each court." Rule 2(e), Rules
22 Governing Section 2254 Cases in the United States District Courts ("Habeas Rules"), 28 U.S.C.
23 foll. § 2254. *See Bianchi v. Blodgett*, 925 F.2d 305, 308 (9th Cir. 1991) (citing an earlier version
24 of the Habeas Rules).

25 Because Petitioner was not authorized to file a second supplemental traverse and
26 consolidation would not be permitted under the Habeas Rules, the Court finds the prison staff's

27 ³ In the motion, Petitioner appears to take issue with the manner in which Respondent lodged the state court record in
28 Case No. 1:21-cv-01554AWI-EPG. Petitioner also makes wide-ranging allegations regarding an alleged conspiracy
against him involving various officials and complains of discovery issues in state court.

1 action in holding the envelope for 27 days⁴ did not prevent Petitioner from fully and fairly
2 presenting his case. Accordingly, Petitioner is not entitled to relief under Rule 60(b)(3), and the
3 motion is denied.

4 **IV. CERTIFICATE OF APPEALABILITY**

5 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of relief, and an appeal is only allowed in certain circumstances. *Miller-El*
7 *v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. In *United States v. Winkles*, 795
8 F.3d 1134 (9th Cir. 2015), the Ninth Circuit held a certificate of appealability “is required to
9 appeal the denial of a Rule 60(b) motion for relief from judgment arising out of the denial of a
10 section 2255 motion.” *Id.*, 795 F.3d at 1142. If a court denies a Rule 60(b) motion in a § 2255
11 proceeding, a certificate of appealability should only issue if “(1) jurists of reason would find it
12 debatable whether the district court abused its discretion in denying the Rule 60(b) motion and (2)
13 jurists of reason would find it debatable whether the underlying section 2255 motion states a valid
14 claim of the denial of a constitutional right.” *Winkles*, 795 F.3d at 1143. “Given that section 2255
15 ‘was intended to mirror § 2254 in operative effect,’ and that the language used in sections
16 2253(c)(1)(A) and (c)(1)(B) is functionally identical,” *id.* at 1141 (citations omitted), the Court
17 applies the standard set forth in *Winkles* to determine whether a certificate of appealability should
18 issue regarding the denial of Petitioner’s Rule 60(b) motion for relief from judgment arising out
19 of the denial of his § 2254 petition. *See Payton v. Davis*, 906 F.3d 812, 818 n.8 (9th Cir. 2018)
20 (recognizing that the analysis in *Winkles* applies to a motion for relief from judgment arising from
21 the denial of a § 2254 petition).

22 The Court finds that jurists of reason would not find it debatable whether the Court abused
23 its discretion in denying the Rule 60(b) motion for relief from judgment. Therefore, the Court
24 declines to issue a certificate of appealability.

25 ///

26 ///

27 ///

28 ⁴ The Court also notes that such action does not appear to constitute fraud, misrepresentation, or other misconduct.

1. **V. ORDER**

2. Based upon the foregoing, the Court **ORDERS**:

3. 1. Petitioner's motion to be relieved of ruling/judgment (Doc. 29) is **DENIED**.
4. 2. The Court declines to issue a certificate of appealability.

5.
6. IT IS SO ORDERED.

7. Dated: **March 23, 2023**


UNITED STATES DISTRICT JUDGE

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Eastern District of California – Live System

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Case Name: (HC) Smith v. Clark

Case Number: 1:21-cv-01346-JLT-EPG

Filer:

WARNING: CASE CLOSED on 12/13/2022

Document Number: 32

Docket Text:

ORDER DENYING Petitioner's [29] Motion to be Relieved of Ruling/Judgment signed by
District Judge Jennifer L. Thurston on 03/23/2023. (Flores, E)

1:21-cv-01346-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, diane.boggess@doj.ca.gov,
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1:21-cv-01346-JLT-EPG Electronically filed documents must be served conventionally by the filer to:

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EXHIBIT COVER PAGE

B-3

EXHIBIT

Description of this Exhibit: Copy of The District Court's notice
of Appeal / Supporting Documents

Number of pages in this Exhibit: 4 pages.

JURISDICTION: (Check only one)

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☐ United States District Court

☐ State Circuit Court

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**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
2500 Tulare Street
Fresno, CA 93721**

LAWRENCE CHRISTOPHER SMITH,
Plaintiff

v.

CASE NO. 1:21-CV-01346-JLT-EPG

KEN CLARK,
Defendant

You are hereby notified that a Notice of Appeal was filed on **April 10, 2023**
in the above entitled case. Enclosed is a copy of the Notice of Appeal, pursuant
to FRAP 3(d).

April 10, 2023

**KEITH HOLLAND
CLERK OF COURT**

by: /s/ A. Lawrence
Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
2500 Tulare Street
Fresno, CA 93721**

TO: CLERK, U.S. COURT OF APPEALS

FROM: CLERK, U.S. DISTRICT COURT

SUBJECT: NEW APPEALS DOCKETING INFORMATION

CASE INFORMATION

USDC Number: 1:21-CV-01346-JLT-EPG
USDC Judge: DISTRICT JUDGE JENNIFER L. THURSTON
USCA Number: NEW APPEAL
Complete Case Title: LAWRENCE CHRISTOPHER SMITH vs. KEN CLARK
Type: CIVIL
Complaint Filed: 9/8/2021
Appealed Order/Judgment Filed: 12/13/2022
Court Reporter Information: N/A

FEE INFORMATION

Fee Status: IFP Granted on 9/8/2021

Information prepared by: /s/ A. Lawrence , Deputy Clerk

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--Case Participants: Justain Paul Riley (diane.boguess@doj.ca.gov, docketingsacawt@doj.ca.gov, ecfcoordinator@doj.ca.gov, justain.riley@doj.ca.gov, tracy.sabella@doj.ca.gov), Magistrate Judge Erica P. Grosjean (aredner@caed.uscourts.gov, egrosjean@caed.uscourts.gov, jdimino@caed.uscourts.gov, jlee@caed.uscourts.gov, mbillman@caed.uscourts.gov, mrooney@caed.uscourts.gov), District Judge Jennifer L. Thurston (caed_cmecf_jlt@caed.uscourts.gov)
--Non Case Participants: Appeals Court - Ninth Circuit (cmecf_ca9central@ca9.uscourts.gov)
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U.S. District Court

Eastern District of California - Live System

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Case Name: (HC) Smith v. Clark
Case Number: 1:21-cv-01346-JLT-EPG
Filer:
WARNING: CASE CLOSED on 12/13/2022
Document Number: 34

Docket Text:

APPEAL PROCESSED to Ninth Circuit re [33] Notice of Appeal filed by Lawrence Christopher Smith. Notice of Appeal filed *4/10/2023*, Complaint filed *9/8/2021* and Appealed Order / Judgment filed *12/13/2022*. Court Reporter: *N/A*. *Fee Status: IFP Granted on 9/8/2021* (Lawrence, A)

1:21-cv-01346-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, tracy.sabella@doj.ca.gov, ecfcoordinator@doj.ca.gov, docketingsacawt@doj.ca.gov, diane.boguess@doj.ca.gov

1:21-cv-01346-JLT-EPG Electronically filed documents must be served conventionally by the filer to:
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B-4
EXHIBIT

Description of this Exhibit: Copy of District Courts Order Dismissing
Rule 59(e) Motion On The Basis of Lack of Jurisdiction

Number of pages in this Exhibit: 4 pages.

JURISDICTION: (Check only one)

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☐ Superior Court

☐ Appellate Court

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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LAWRENCE CHRISTOPHER SMITH,

12 Petitioner,

13 v.

14 KEN CLARK,

15 Respondent.
16

No. 1:21-cv-01346-JLT-EPG (HC)

ORDER DISMISSING PETITIONER'S
MOTION FOR RULE 59(e) RELIEF FOR
LACK OF JURISDICTION

(Doc. 36)

17 Lawrence Christopher Smith is a state prisoner who proceeded *pro se* with a petition for
18 writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner filed a federal habeas
19 petition, raising the following claims for relief: (1) unreasonable search and seizure; (2) false
20 evidence; (3) judicial bias; and (4) selective prosecution. (Doc 1.) On October 12, 2022, the
21 magistrate judge issued findings and recommendations recommending the petition be denied.
22 (Doc. 23.) On December 13, 2022, the Court adopted the findings and recommendations and
23 denied the petition. (Doc. 27.) the Court entered judgment that same day. (Doc. 28.)

24 On January 6, 2023, Petitioner filed a motion for relief from judgment pursuant to Federal
25 Rule of Civil Procedure 60(b)(3). (Doc. 29.) On March 23, 2023, the Court denied Petitioner's
26 Rule 60(b)(3) motion. (Doc. 32.) On April 10, 2023, Petitioner filed a notice of appeal and the
27 appeal was processed to the Ninth Circuit. (Docs. 32, 33.) On April 17, 2023, Petitioner filed the
28 instant motion for Rule 59(e) relief. (Doc. 36.)

1 “Once an appeal is filed, the district court no longer has jurisdiction to consider motions to
2 vacate judgment.” *Davis v. Yageo Corp.*, 481 F.3d 661, 685 (9th Cir. 2007) (citing *Gould v. Mut.*
3 *Life Ins. Co. of N.Y.*, 790 F.2d 769, 772 (9th Cir. 1986)). *Accord Scott v. Younger*, 739 F.2d 1464,
4 1466 (9th Cir. 1984) (“In this circuit, the rule has generally been stated that the filing of a notice
5 of appeal divests the district court of jurisdiction to dispose of the motion after an appeal has been
6 taken, without a remand from this court.” (quotation marks omitted) (quoting *Long v. Bureau of*
7 *Economic Analysis*, 646 F.2d 1310, 1318 (9th Cir. 1981))). “The proper procedure, once an
8 appeal has been taken, is to ‘ask the district court whether it wishes to entertain the motion, or to
9 grant it, and then move [the Ninth Circuit], if appropriate, for remand of the case.’” *Gould*, 790
10 F.2d at 772 (quotation marks omitted) (quoting *Scott*, 739 F.2d at 1466).

11 The basis for Petitioner’s Rule 59(e) motion appears to be various actions by the
12 California Department of Corrections and Rehabilitation that Petitioner alleges denied him access
13 to the courts. (Doc. 36 at 2–4.) The Court notes that Petitioner’s list of allegedly obstructive
14 conduct mostly consists of actions that pre-date this habeas proceeding and concern matters
15 outside of this habeas proceeding. Petitioner also appears to allege that CDCR obstructed receipt
16 by the Court of a reply in support of his Rule 60(b)(3) motion. It is highly doubtful that a reply
17 would have changed the Court’s analysis in denying the Rule 60 motion. Therefore, the Court
18 declines to entertain Petitioner’s post-appeal Rule 59(e) motion. Accordingly, the Court
19 **ORDERS** that Petitioner’s Rule 59(e) motion (Doc. 36) is **DISMISSED** for lack of jurisdiction.

20
21 IT IS SO ORDERED.

22 Dated: May 26, 2023


UNITED STATES DISTRICT JUDGE

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Eastern District of California – Live System

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Case Name: (HC) Smith v. Clark

Case Number: 1:21-cv-01346-JLT-EPG

Filer:

WARNING: CASE CLOSED on 12/13/2022

Document Number: 37

Docket Text:

ORDER DISMISSING Petitioner's [36] Motion for Rule 59(e) Relief for Lack of Jurisdiction signed by District Judge Jennifer L. Thurston on 5/26/2023. (Sant Agata, S)

1:21-cv-01346-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, diane.boggess@doj.ca.gov,
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EXHIBIT COVER PAGE

B-5

EXHIBIT

Description of this Exhibit: Copy of District Court's Order In Sister
Petition (Denying leave To Amend etc.,)

Number of pages in this Exhibit: 8 pages.

JURISDICTION: (Check only one)

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☐ Appellate Court

☐ State Supreme Court

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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 LAWRENCE CHRISTOPHER SMITH,

12 Petitioner,

13 v.

14 KEN CLARK,

15 Respondent.
16
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Case No. 1:21-cv-01554-JLT-EPG-HC

ORDER DENYING PETITIONER'S
MOTIONS TO AMEND, MOTION TO
WITHDRAW PLEADINGS, MOTIONS TO
CONSOLIDATE, AND MOTION FOR
CONTEMPT PROCEEDINGS

(ECF Nos. 30, 36, 38, 39, 40, 43)

ORDER GRANTING PETITIONER
EXTENSION OF TIME TO FILE
TRAVERSE

19 Petitioner Lawrence Christopher Smith is a state prisoner proceeding *pro se* with a
20 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Before the Court are Petitioner's
21 motions to amend, motion for contempt proceedings, motion to withdraw pleadings, and motions
22 to consolidate. (ECF Nos. 30, 36, 38, 39, 40, 43.)

23 **I.**

24 **DISCUSSION**

25 **A. Motions to Withdraw Pleadings and Consolidate Petitions (ECF Nos. 36, 39, 40)**

26 In the motion to withdraw pleadings, Petitioner seeks to withdraw his previously
27 submitted motion to amend (ECF No. 30) because "the proper course of action for [Petitioner] to
28 have taken is to have sought to consolidate the current petition(s) [Petitioner has] before the

1 Court and . . . then filing a reply to the Respondent's answers in one pleading hence
2 [Petitioner's] actions in seeking to consolidate Case No. 1:21-cv-01346-JLT-EPG (HC) here."
3 (ECF 39 at 2.)¹ In the motions to consolidate petitions, Petitioner seeks to consolidate the instant
4 matter challenging his 2021 Kings County convictions with Smith v. Clark, No. 1:21-cv-01346-
5 JLT-EPG, which challenges Petitioner's 2017 Kern County convictions. (ECF Nos. 36, 40.)²

6 "A petitioner who seeks relief from judgments of more than one state court must file a
7 separate petition covering the judgment or judgments of each court." Rule 2(e), Rules Governing
8 Section 2254 Cases in the United States District Courts ("Habeas Rules"), 28 U.S.C. foll. § 2254.
9 The instant matter seeks relief from a 2021 Kings County Superior Court judgment. In Smith v.
10 Clark, No. 1:21-cv-01346-JLT-EPG, Petitioner seeks relief from a 2017 Kern County Superior
11 Court judgment. (Petition, Smith v. Clark, No. 1:21-cv-01346-JLT-EPG, ECF No. 1.) As
12 Petitioner is seeking relief from judgments of more than one state court, he must file separate
13 petitions. Accordingly, consolidation is not warranted, and the Court will deny the motions to
14 consolidate petitions and the motion to withdraw pleadings.³

15 **B. Motions to Amend**

16 A party may amend its pleading once as a matter of course within 21 days after serving it,
17 or "if the pleading is one to which a responsive pleading is required, 21 days after service of a
18 responsive pleading." Fed. R. Civ. P. 15(a)(1). But "[i]n all other cases, a party may amend its
19 pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P.
20 15(a)(2). See Mayle v. Felix, 545 U.S. 644, 655 (2005) (noting Federal Rule of Civil Procedure
21 15 is applicable to habeas proceedings).

22 Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2).
23 However, the Court may decline to grant leave to amend "if there is strong evidence of 'undue
24 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies

25 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

26 ² The Court notes that ECF No. 36 is listed as a motion to amend on the docket, but the document itself is entitled
"Petitioners Motion To Consolidate Petitions." (ECF No. 36 at 1.)

27 ³ In the motion to withdraw pleadings, Petitioner seeks to withdraw his previously submitted motion to amend
because "the proper course of action for [Petitioner] to have taken is to have sought to consolidate the current
28 petition(s) [Petitioner has] before the Court[.]" (ECF 39 at 2.) However, given that the motions to consolidate have
been denied, the Court will deny the motion to withdraw and address the motion to amend in the interest of justice.

1 by amendments previously allowed, undue prejudice to the opposing party by virtue of
2 allowance of the amendment, [or] futility of amendment, etc.” Sonoma Cty. Ass’n of Retired
3 Employees v. Sonoma Cty., 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting Foman v. Davis, 371
4 U.S. 178, 182 (1962)). “Futility alone can justify a court’s refusal to grant leave to amend.”
5 Novak v. United States, 795 F.3d 1012, 1020 (9th Cir. 2015) (citing Bonin v. Calderon, 59 F.3d
6 815, 845 (9th Cir. 1995)).

7 1. ECF No. 30

8 On November 7, 2022, Petitioner moved to amend the petition and lodged an amended
9 petition. (ECF Nos. 30, 31.) Respondent filed an opposition. (ECF No. 34.) Here, an answer has
10 been filed and Petitioner did not move to amend within 21 days after the responsive pleading was
11 filed. As Respondent has opposed the motion to amend, Petitioner may only amend his petition
12 with the Court’s leave.

13 Petitioner claims that when he drafted the original petition he “was ill from the
14 debilitating effects of anemia . . . which is known to affect cognitive abilities.” (ECF No. 30 at
15 3.) Petitioner’s argument appears to be that the original petition is lacking because he drafted it
16 while ill from anemia. Yet after reviewing the petition and the amended petition, this Court does
17 not perceive any significant change in substance between the two petitions. The proposed
18 amended petition appears to reword and reorganize the claims and arguments, but it raises the
19 same claims, arguments, and facts as the original petition. Given that the proposed amended
20 petition is substantively identical to the original petition and Respondent has already filed an
21 answer, the Court finds that leave to amend is not warranted. Any enhancement or supplement to
22 the claims can be included in Petitioner’s traverse.

23 “Pursuant to section 636, magistrate judges may hear and determine nondispositive
24 matters, but not dispositive matters, in § 2254 proceedings.” Mitchell v. Valenzuela, 791 F.3d
25 1166, 1168 (9th Cir. 2015) (citing Hunt v. Pliler, 384 F.3d 1118, 1123 (9th Cir. 2004)). “To
26 determine whether a motion is dispositive, we have adopted a functional approach that looks to
27 the effect of the motion, in order to determine whether it is properly characterized as dispositive
28 or non-dispositive of a claim or defense of a party.” Id. at 1168–69 (internal quotation marks

omitted) (quoting Flam v. Flam, 788 F.3d 1043, 1046 (9th Cir. 2015)). “Under [Ninth Circuit] caselaw, to determine whether a magistrate judge’s ruling denying a motion is dispositive, we examine whether the denial of the motion effectively disposes of a claim or defense or precludes the ultimate relief sought.” Bastidas v. Chappell, 791 F.3d 1155, 1164 (9th Cir. 2015) (citing S.E.C. v. CMKM Diamonds, Inc., 729 F.3d 1248, 1260 (9th Cir. 2013)). Given that denial of leave to amend in the instant proceeding does not “effectively dispose[] of a claim or defense or preclude[] the ultimate relief sought,” Bastidas, 791 F.3d at 1164, the undersigned has authority to deny Petitioner’s motion for leave to amend.⁴

2. ECF No. 43

On April 21, 2023, Petitioner filed another motion to amend. (ECF No. 43.) Respondent filed an opposition, and Petitioner filed a reply. (ECF Nos. 44, 45.) In this motion to amend, Petitioner appears to seek to supplement his petition with challenges to his 2022 convictions in two criminal cases and two disciplinary hearings. (ECF No. 43 at 4.)

Here, an answer already has been filed addressing the merits of the original petition. It does not appear that any claims challenging the new 2022 criminal convictions and/or the two disciplinary hearings have been exhausted. Any amended petition adding unexhausted claims would have to be dismissed as a mixed petition. See Bolin v. Baker, 994 F.3d 1154, 1156 (9th Cir. 2021) (“[F]ederal courts may not adjudicate ‘mixed petitions’ for habeas corpus—that is, petitions that contain both exhausted and unexhausted federal claims.” (citing Rose v. Lundy, 455 U.S. 509, 510 (1982))). And Petitioner’s vague and conclusory assertions do not establish that he falls within one of the statutory exceptions to the exhaustion requirement or that his failure to exhaust available state remedies should be excused. See 28 U.S.C. § 2254(b)(1)(B) (stating that a petitioner is excused from the exhaustion requirement if “(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant”); Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (noting that an “exception [to the exhaustion requirement] is made only if there is no opportunity to

⁴ A party may file objections to a magistrate judge’s order within fourteen days after being served a copy of the order, and a district judge will “consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a); Local Rule 303.

1 obtain redress in state court or if the corrective process is so clearly deficient as to render futile
2 any effort to obtain relief”); Hendricks v. Zenon, 993 F.2d 664, 672 (9th Cir. 1993) (recognizing
3 that exhaustion requirement may be excused “in rare cases where exceptional circumstances of
4 peculiar urgency are shown to exist” (quoting Granberry v. Greer, 481 U.S. 129, 134 (1987))).

5 Given that any amended petition adding Petitioner’s unexhausted claims would have to
6 be dismissed as a mixed petition, the Court finds that leave to amend is not warranted. This
7 conclusion does not preclude Petitioner from challenging his 2022 criminal convictions and the
8 two disciplinary hearings in separately filed habeas petitions. As denial of leave to amend does
9 not “effectively dispose[] of a claim or defense or preclude[] the ultimate relief sought,”
10 Bastidas, 791 F.3d at 1164, the undersigned has authority to deny Petitioner’s motion for leave to
11 amend.

12 C. Motion for Contempt Proceedings (ECF No. 38)

13 “Civil contempt ‘consists of a party’s disobedience to a specific and definite court order
14 by failure to take all reasonable steps within the party’s power to comply.’” United States v.
15 DAS Corp., 18 F.4th 1032, 1039 (9th Cir. 2021) (quoting In re Dual-Deck Video Cassette
16 Recorder Antitrust Litig., 10 F.3d 693, 695 (9th Cir. 1993)). “For issuance of a contempt order
17 against [Respondent] to be proper, [Petitioner] must establish ‘(1) that [Respondent] violated the
18 court order, (2) beyond substantial compliance, (3) not based on a good faith and reasonable
19 interpretation of the order, (4) by clear and convincing evidence.’” Lab./Cmty. Strategy Ctr. v.
20 Los Angeles Cnty. Metro. Transp. Auth., 564 F.3d 1115, 1123 (9th Cir. 2009) (quoting In re
21 Dual-Deck Video Cassette Recorder Antitrust Litig., 10 F.3d at 695).

22 Here, Petitioner appears to argue that Respondent should be held in contempt pursuant to
23 Federal Rule of Civil Procedure 70(e) and compensatory damages should be awarded because
24 Respondent electronically lodged the state court record in this proceeding and did not provide
25 Petitioner with a hard copy. (ECF No. 38 at 3, 5–6.) However, Respondent did not disobey any
26 court order. In the Court’s January 27, 2022 order to respond, the Court ordered:

27 Respondent SHALL FILE any and all transcripts or other
28 documents necessary for the resolution of the issues presented in
the Petition. See Rule 5(c), Rules Governing Section 2254 Cases.

(ECF No. 8 at 2 (emphasis in original).) The Court ordered Respondent to only file the state court record electronically and did not order Respondent to provide Petitioner with a hard copy of the state court record. As Petitioner has not established by clear and convincing evidence that Respondent violated a court order, the Court finds that issuance of a contempt order is not warranted.

ORDER

1. The motions to consolidate (ECF Nos. 36, 40) are DENIED;
2. The motion to withdraw pleadings (ECF No. 39) is DENIED;
3. The motions to amend (ECF Nos. 30, 43) are DENIED;
4. The motion for contempt proceedings (ECF No. 38) is DENIED; and
5. Within **THIRTY (30) days** from the date of service of this order Petitioner may file a traverse.

Dated: May 25, 2023

UNITED STATES MAGISTRATE JUDGE

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Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 5/25/2023 at 11:01 AM PDT and filed on 5/25/2023

Case Name: (HC)Smith v. Clark
Case Number: 1:21-cv-01554-JLT-EPG
Filer:
Document Number: 46

Docket Text:

ORDER DENYING [30], [36], [38], [39], [40] & [43] Petitioner's Motions to Amend, Motion to Withdraw Pleadings, Motions to Consolidate, and Motion for Contempt Proceedings; ORDER GRANTING Petitioner Extension of Time to File Traverse signed by Magistrate Judge Erica P. Grosjean on 5/25/2023. *Traverse due within thirty (30) days.* (Lawrence, A)

1:21-cv-01554-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, diane.bogges@doj.ca.gov,
docketingSACAWT@doj.ca.gov, ECFCoordinator@doj.ca.gov, tracy.sabella@doj.ca.gov

1:21-cv-01554-JLT-EPG Electronically filed documents must be served conventionally by the filer to:

Lawrence Christopher Smith
F-29502
PELICAN BAY STATE PRISON (7500)
P.O. Box 7500
Crescent City, CA 95532-7500

The following document(s) are associated with this transaction:

EXHIBIT COVER PAGE

B6
EXHIBIT

Description of this Exhibit: Copy of Notice of Appeal Filed in
State Petition

Number of pages in this Exhibit: 4 pages.

JURISDICTION: (Check only one)

☐ Municipal Court

☐ Superior Court

☐ Appellate Court

☐ State Supreme Court

☐ United States District Court

☐ State Circuit Court

☒ United States Supreme Court

☐ Grand Jury

Lawrence Christopher Smith F-29502
PELICAN BAY STATE PRISON (7500)
P.O. Box 7500
Crescent City, CA 95532-7500

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
2500 Tulare Street
Fresno, CA 93721**

LAWRENCE CHRISTOPHER SMITH,
Plaintiff

v.

CASE NO. 1:21-CV-01554-JLT-EPG

KEN CLARK,
Defendant

You are hereby notified that a Notice of Appeal was filed on **June 09, 2023**
in the above entitled case. Enclosed is a copy of the Notice of Appeal, pursuant
to FRAP 3(d).

June 12, 2023

**KEITH HOLLAND
CLERK OF COURT**

by: /s/ J. Xiong
Deputy Clerk

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

**OFFICE OF THE CLERK
2500 Tulare Street
Fresno, CA 93721**

TO: CLERK, U.S. COURT OF APPEALS

FROM: CLERK, U.S. DISTRICT COURT

SUBJECT: NEW APPEALS DOCKETING INFORMATION

CASE INFORMATION

USDC Number: 1:21-CV-01554-JLT-EPG

USDC Judge: DISTRICT JUDGE JENNIFER L. THURSTON

USCA Number: NEW APPEAL

Complete Case Title: LAWRENCE CHRISTOPHER SMITH vs. KEN CLARK

Type: CIVIL

Complaint Filed: 10/21/2021

Appealed Order/Judgment Filed: 5/25/2023

Court Reporter Information:

FEE INFORMATION

Fee Status: IFP Granted on 10/22/2021

Information prepared by: /s/ J. Xiong , Deputy Clerk

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Lawrence Christopher Smith
F-29502
PELICAN BAY STATE PRISON (7500)
P.O. Box 7500
Crescent City CA 95532-7500

--Case Participants: Justain Paul Riley (diane.boggess@doj.ca.gov, docketingsacawt@doj.ca.gov, ecfcordinator@doj.ca.gov, justain.riley@doj.ca.gov, tracy.sabella@doj.ca.gov), District Judge Jennifer L. Thurston (caed_cmecf_jlt@caed.uscourts.gov), Magistrate Judge Erica P. Grosjean (aredner@caed.uscourts.gov, egrosjean@caed.uscourts.gov, jdimino@caed.uscourts.gov, jlee@caed.uscourts.gov, mbillman@caed.uscourts.gov, mrooney@caed.uscourts.gov)
--Non Case Participants: Appeals Court - Ninth Circuit (cmecf_ca9central@ca9.uscourts.gov)
--No Notice Sent:
Message-Id: Subject:Activity in Case 1:21-cv-01554-JLT-EPG (HC)Smith v. Clark . Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 6/12/2023 at 11:57 AM PDT and filed on 6/12/2023

Case Name: (HC)Smith v. Clark
Case Number: 1:21-cv-01554-JLT-EPG
Filer:
Document Number: 48

Docket Text:
APPEAL PROCESSED to Ninth Circuit re [47] Notice of Interlocutory Appeal filed by Lawrence Christopher Smith. Notice of Appeal filed *6/9/2023*, Complaint filed *10/21/2021* and Appealed Order / Judgment filed *5/25/2023*. **Fee Status: IFP Granted on 10/22/2021* (Xiong, J.)

1:21-cv-01554-JLT-EPG Notice has been electronically mailed to:

Justain Paul Riley justain.riley@doj.ca.gov, tracy.sabella@doj.ca.gov, ecfcordinator@doj.ca.gov, docketingsacawt@doj.ca.gov, diane.boggess@doj.ca.gov

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**Additional material
from this filing is
available in the
Clerk's Office.**