

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cunningham v. Warden

Cunningham · No. 1:25-cv-00180-KES-SKO (HC) · Decided April 22, 2025

SUMMARY

The United States District Court for the Eastern District of California vacated its prior Findings and Recommendation construing a subsequently filed habeas petition as a motion to amend. The court directed the Clerk to open a new 28 U.S.C. § 2255 case using that petition, transfer it to the Eastern District of Washington, and reset the response deadline to fourteen days from service of the order.

OPINION

(HC) Cunningham v. Warden

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 AARON JOSEPH CUNNINGHAM, No. 1:25-cv-00180-KES-SKO (HC)

12 Petitioner, ORDER VACATING FINDINGS AND

RECOMMENDATION

13 (Doc. 11)

14 v. ORDER DIRECTING CLERK OF COURT TO

DISREGARD PETITION FILED IN THIS

15 CASE, OPEN A NEW § 2255 CASE

UTILIZING THE DOCUMENT, AND

16 WARDEN, FCI MENDOTA, TRANSFER CASE TO THE EASTERN

DISTRICT OF WASHINGTON

17 Respondent. (Doc. 9)

18 ORDER RESETTING BRIEFING

SCHEDULE

19

[FOURTEEN-DAY DEADLINE]

20 21 Petitioner is a federal prisoner proceeding pro se and in forma pauperis with a petition for
22 writ of habeas corpus pursuant to 28 U.S.C. § 2241. On January 24, 2025, Petitioner filed a 23
habeas petition in the Sacramento Division of the Eastern District of California. (Doc. 1.) Because

24 Petitioner is incarcerated in the Federal Correctional Institution in Mendota, California, and the
25 institution lies within the Fresno Division of the Eastern District, the case was transferred to
this 26 Court on February 11, 2025. (Doc. 4.) 27 On February 13, 2025, the Court issued an order
directing Respondent to file a response to 28 the petition. (Doc. 7.) Thereafter, on April 7, 2025,
Petitioner filed a subsequent petition for writ 1 of habeas corpus in this Court. (Doc. 9.) A second
petition filed while another one is pending is 2 generally construed as a motion to amend the first
petition. *Goodrum v. Busby*, 824 F.3d 1188, 3 1192 (9th Cir. 2016); see also *Woods v. Carey*, 525
F.3d 886, 890 (9th Cir. 2008). Accordingly, 4 on April 9, 2025, the Court construed Petitioner's
petition as a motion to amend and 5 recommended denying said motion. (Doc. 11.) 6 On April 16,
2025, Petitioner filed objections to the Findings and Recommendation. (Doc. 7 12.) Petitioner
states he did not intend to amend the petition, and misfiled the petition in this 8 Court. He states
he should have filed the petition in the Eastern District of Washington, as that is 9 the court of
conviction. 10 Accordingly, IT IS HEREBY ORDERED: 11 1) The Findings and
Recommendation issued on April 9, 2025, (Doc. 11), is VACATED; 12 2) The Clerk of Court is
directed to disregard the petition of April 9, 2025, (Doc. 9) in 13 this case; open a new § 2255 case
using the petition, and transfer the petition to the 14 Eastern District of Washington; and 15 3) The
deadline to file a response to the petition is set fourteen (14) days from the date of 16 service of
this order. 17 IT IS SO ORDERED. 18 19 Dated: April 21, 2025 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

20 21 22 23 24 25 26 27 28