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

ADAM GRAY,

Petitioner,

No. CIV S-09-1690 MCE EFB P

vs.

K. HARRINGTON,

Respondent.

FINDINGS AND RECOMMENDATIONS


_____/

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254. On May 3, 2011, the court found that the application for a writ of habeas corpus was second or successive, and that petitioner had not demonstrated that he obtained leave from the appellate court to proceed thereon. *See* 28 U.S.C. § 2244(b)(3), (4). The court compared the petition in this case to the petition in case number Civ. S-07-0126 MCE EFB P. The court determined that petitioner challenges the same judgment in both actions. Accordingly, the court gave petitioner 30 days to demonstrate that he had obtained leave from the appellate court to proceed on the instant petition. The court admonished petitioner that failure to comply with the order would result in a recommendation that the action be dismissed as an unauthorized second or successive petition. More than 30 days have elapsed and petitioner has not responded to the order to show cause.

1 Accordingly, it is hereby RECOMMENDED that this action be dismissed on the ground
2 that the petition is second or successive and petitioner has not demonstrated that the Ninth
3 Circuit has granted him leave to file it in this court.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days after
6 being served with these findings and recommendations, any party may file written objections
7 with the court and serve a copy on all parties. Such a document should be captioned “Objections
8 to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the
9 specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158
10 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In his objections
11 petitioner may address whether a certificate of appealability should issue in the event he files an
12 appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing § 2254 Cases (the
13 district court must issue or deny a certificate of appealability when it enters a final order adverse
14 to the applicant).

15 Dated: July 19, 2011.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE