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

ANTHONY B. TILLMAN,

Petitioner,

No. 2:11-cv-1093 LKK DAD (HC)

vs.

BOARD OF PAROLE HEARINGS,

Respondents.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus raising identical claims against the California Board of Parole Hearings. See Case No. 1:10-cv-2091 OWW SMS (E.D. Cal.). Petitioner’s previous habeas action was filed on October 8, 2010, and was denied on the merits on March 3, 2011. Before petitioner can proceed with the instant application he must move in the United States Court of Appeals for the

1 Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C.
2 § 2244(b)(3). Therefore, petitioner's application must be dismissed without prejudice to its
3 refiling upon obtaining authorization from the United States Court of Appeals for the Ninth
4 Circuit.

5 In accordance with the above, IT IS HEREBY ORDERED that petitioner's
6 application to proceed in forma pauperis is granted; and

7 IT IS HEREBY RECOMMENDED that this action be dismissed without
8 prejudice.

9 These findings and recommendations are submitted to the United States District
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
11 days after being served with these findings and recommendations, petitioner may file written
12 objections with the court. The document should be captioned "Objections to Magistrate Judge's
13 Findings and Recommendations." Petitioner is advised that failure to file objections within the
14 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
15 F.2d 1153 (9th Cir. 1991).

16 DATED: July 27, 2011.

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19 _____
20 DALE A. DROZD
21 UNITED STATES MAGISTRATE JUDGE

21 DAD:12
22 till1093.success