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

RAYMOND WALKER,

Petitioner,

No. CIV S-11-2717 DAD P

vs.

GREG LEWIS,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus, an application to proceed in forma pauperis and a request for the appointment of counsel. Petitioner’s application to proceed in forma pauperis will be 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 attacking the same 2006 conviction and sentence that he seeks to challenge in this federal habeas action.<sup>1</sup> Petitioner’s previous application for federal habeas relief was filed

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<sup>1</sup> A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (“a court may take judicial notice of its own records in other cases, as well as the records of an inferior court in other cases.”).

1 with this court on June 4, 2009<sup>2</sup>, and was denied as barred by the applicable statute of limitations  
2 on December 7, 2009.<sup>3</sup> Before petitioner can proceed with the instant application for habeas  
3 relief he must move in the United States Court of Appeals for the Ninth Circuit for an order  
4 authorizing the district court to consider such a second or successive application. See 28 U.S.C.  
5 § 2244(b)(3); see also McNabb v. Yates, 576 F.3d 1028, 1030 (9<sup>th</sup> Cir. 2009) (“dismissal of a  
6 section 2254 habeas petition for failure to comply with the statute of limitations renders  
7 subsequent petitions second or successive for purposes of the AEDPA, 28 U.S.C. §2244(b).”).  
8 Therefore, petitioner’s application must be dismissed without prejudice to its refileing upon  
9 obtaining authorization from the United States Court of Appeals for the Ninth Circuit. In light of  
10 the court’s recommendation, petitioner’s motion for appointment of counsel will be denied.

11 In accordance with the above, IT IS HEREBY ORDERED that:

- 12 1. Petitioner’s October 14, 2011 application to proceed in forma pauperis (Doc.  
13 No. 2) is granted;
- 14 2. Petitioner’s October 14, 2011 motion for appointment of counsel (Doc. No. 3)  
15 is denied; and
- 16 3. This action be randomly assigned to a District Judge.

17 Also, IT IS HEREBY RECOMMENDED that this action be dismissed without  
18 prejudice.

19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
21 one days after being served with these findings and recommendations, petitioner may file written  
22 objections with the court. Such a document should be captioned “Objections to Magistrate

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23 <sup>2</sup> See Walker v. Jacquez, CIV S-09-1658 JAM JFM P.

24 <sup>3</sup> In that previous case, petitioner filed an appeal to the U.S. Court of Appeals for the  
25 Ninth Circuit. The appeal was determined to be untimely, and the court held that to the extent  
26 petitioner sought permission to file a second or successive habeas petition, he had failed to make  
a prima facie showing required under 28 U.S.C. § 2244(b)(2).

1 Judge's Findings and Recommendations." Petitioner is advised that failure to file objections  
2 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 DATED: November 2, 2011.

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8 DALE A. DROZD  
9 UNITED STATES MAGISTRATE JUDGE

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