

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

AARON P. STONE,

Petitioner,

No. 2:12-CV-2174 GGH P

vs.

MATTHEW CATES,

Respondent.

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 attacking the conviction and sentence challenged in this case. (Stone v. Martel, CIV-10-3454 (KJM GGH P). The previous application was filed on December 27, 2010, and was denied on the merits (timeliness) on March 26, 2012. Before petitioner can proceed with the instant application he must move in the United States Court of Appeals for the Ninth

1 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:

- 6 1. Petitioner’s application to proceed in forma pauperis is granted; and
- 7 2. The Clerk is directed to assign a district judge to this case.

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

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

17 DATED: September 20, 2012

18
19 /s/ Gregory G. Hollows
20 UNITED STATES MAGISTRATE JUDGE

21
22 ggh:rb
23 ston2174.success
24
25
26