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

EDWARD TERRELL,

Petitioner,

No. 2:12-cv-2895 AC P

vs.

RON BARONS,

Respondent.

ORDER and

FINDINGS and 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. The previous application was filed on February 16, 2007, and was denied on the merits on March 17, 2009. See Terrell v. Woodford, Case No. 2:07-cv-0784 MJP P (“Terrell I”), Doc. Nos. 1, 33.

1 The court’s records reflect that, since Terrell I was decided, petitioner has filed at
2 least three other petitions challenging the same 2003 conviction. See Terrell v. McDonald, Case
3 No. 2:11-cv-2095 KJM EFB (“Terrell II”) (dismissed for lack of jurisdiction on January 9,
4 2012); Terrell v. McDonald, Case No. 2:12-cv-1988 KJM CKD (“Terrell III”) (dismissed for
5 lack of jurisdiction on September 25, 2012); Terrell v. McDonald, Case No. 2:11-cv-2119 JAM
6 JFM (“Terrell IV”) (dismissed for lack of jurisdiction on November 16, 2012).

7 The current petition is also successive, as it challenges the same 2003 conviction
8 at issue in each of petitioner’s prior petitions. Accordingly, this court lacks jurisdiction to
9 entertain the application unless the Court of Appeals for the Ninth Circuit has authorized this
10 court to do so. See 28 U.S.C. § 2244(b)(3)(A). See also, e.g., Wentzell v. Neven, 674 F.3d
11 1124, 1126 (9th Cir. 2012) (“A petitioner must obtain leave from the Court of Appeals in order
12 to file a ‘second or successive’ habeas petition with the district court.”). The current application
13 includes no information to suggest that petitioner has sought or received permission from the
14 Court of Appeals to file the instant petition. Therefore, petitioner’s application must be
15 dismissed without prejudice to its refiling upon obtaining authorization from the United States
16 Court of Appeals for the Ninth Circuit.

17 In accordance with the above, IT IS HEREBY ORDERED that

- 18 1. Petitioner’s application to proceed in forma pauperis is granted; and
- 19 2. The Clerk shall assign a district judge to this action.

20 IT IS HEREBY RECOMMENDED that this action be dismissed without
21 prejudice.

22 These findings and recommendations are submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
24 eight (28) days after being served with these findings and recommendations, petitioner may file
25 written objections with the court. The document should be captioned “Objections to Magistrate
26 Judge's Findings and Recommendations.” Petitioner is advised that failure to file objections

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: December 7, 2012.

Allison Claire

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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