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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD E. CAVNESS-BEY,
Petitioner,
v.
RONALD DAVIS,
Respondent.

No. 2:15-cv-2090 WBS KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

By order filed October 19, 2015, petitioner’s habeas application was dismissed and thirty days leave to file an amended application was granted. The thirty day period has now expired, and petitioner has not responded to the court’s order.

On November 9, 2015, petitioner filed a notice of interlocutory appeal, and a motion for certificate of appealability, both concerning the October 19, 2015 order. However, on February 23, 2016, the United States Court of Appeals for the Ninth Circuit dismissed petitioner’s appeal. Thus, petitioner’s motion for certificate of appealability is moot.


Accordingly, IT IS HEREBY ORDERED that petitioner’s motion for certificate of appealability (ECF No. 12) is denied as moot; and

IT IS RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

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1 These findings and recommendations are submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
3 after being served with these findings and recommendations, any party may file written
4 objections with the court and serve a copy on all parties. Such a document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,
6 he shall also address whether a certificate of appealability should issue and, if so, why and as to
7 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
8 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
9 § 2253(c)(3). Any response to the objections shall be served and filed within fourteen days after
10 service of the objections. The parties are advised that failure to file objections within the
11 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
12 F.2d 1153 (9th Cir. 1991).

13 Dated: April 7, 2016

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16 KENDALL J. NEWMAN
17 UNITED STATES MAGISTRATE JUDGE

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