

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARRYL KEITH ALEXANDER,
Petitioner,
v.
ERIC ARNOLD,
Respondent.

No. 2:16-cv-0060 GEB CKD P

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 request to proceed in forma pauperis 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).

Court 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 filed in 2:14-cv-0644 JKS P was denied on the merits on September 15, 2015 and is currently on appeal at the Ninth Circuit. Before petitioner can proceed with the instant successive petition, he must move in the Ninth Circuit for an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s habeas petition must be dismissed without

////

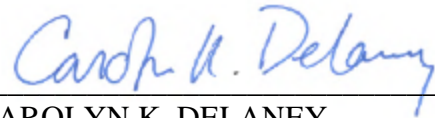
1 prejudice to its refiling upon petitioner obtaining the required authorization from the Ninth
2 Circuit.

3 Accordingly, IT IS HEREBY ORDERED that petitioner's request for leave to proceed in
4 forma pauperis is granted; and

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

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, petitioner may file written
9 objections with the court. Such a document should be captioned "Objections to Magistrate
10 Judge's Findings and Recommendations." In his objections petitioner may address whether a
11 certificate of appealability should issue in the event he files an appeal of the judgment in this
12 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
13 deny a certificate of appealability when it enters a final order adverse to the applicant). Petitioner
14 is advised that failure to file objections within the specified time may waive the right to appeal the
15 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: February 1, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

17
18
19
20
21 1
22 alex0060.suc
23
24
25
26
27
28