Robert James Ossawa Wood v. Neil McDowell Doc. 18

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT JAMES OSSAWA WOOD, Petitioner, v. NEIL MCDOWELL, Respondent.	Case No. CV 19-10102-RSWL (JEM) ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. Section 636, the Court has reviewed the pleadings, the records on file, and the Report and Recommendation of the United States Magistrate Judge. No Objections to the Report and Recommendation have been filed within the time allowed for Objections. The Court accepts the findings and recommendations of the Magistrate Judge.

Based on the foregoing, IT IS HEREBY ORDERED:

(1) Respondent's Motion to Vacate is GRANTED.

(2) Pursuant to Ninth Circuit Rule 22-3(a), the Court hereby REFERS the Petition to the Ninth Circuit for consideration as an application for leave to file a second or successive habeas corpus petition.

Dockets.Justia.com

"Petitioner is advised that this referral alone does not constitute compliance with Circuit Rule 22-3 and 28 U.S.C. § 2255(h). Petitioner must still file a motion for leave to proceed in the Court of Appeals and make the requisite showing" to convince the Ninth Circuit to grant him leave to file this second-or-successive habeas petition." Henderson v. Madden, No. LA CV 16-02003-VBF (AGR), 2016 WL 4009873, at *3 n.1, *5-6 (C.D. Cal. June 3, 2016) (collecting cases in which Ninth Circuit district courts issued this advisement to pro se habeas petitioners). Petitioner is directed to consult this statute and Ninth Circuit Rule 22-3 for further information.

(3) The Clerk shall send copies of the Petition and this Order to the Ninth Circuit. The Clerk also shall mail Petitioner a copy of Ninth Circuit Rule 22-3 and Ninth Circuit Court of Appeals Form 12, entitled "Application for Leave to File Second or Successive Petition Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255."

(4) The Petition is DISMISSED without prejudice to its refiling after Petitioner obtains permission to do so from the Ninth Circuit.

DATED: August 27, 2020

s/ RONALD S.W. LEW

RONALD S.W. LEW
UNITED STATES DISTRICT JUDGE