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

UNITED STATES OF AMERICA,

Respondent,

No. CIV S-07-0156 FCD EFB P

vs.

JAMES BENJAMIN CHARLES,

Movant.

FINDINGS AND RECOMMENDATIONS

_____/

Movant is a federal prisoner without counsel seeking post-conviction relief pursuant to 28 U.S.C. § 2255. Movant has not responded to an order directing him to show cause why this action should not be dismissed for lack of jurisdiction. For the reasons explained below, the court finds that this action must be dismissed.

On June 10, 2009, the court found that it lacked jurisdiction over this action. Dckt. No. 12. In arriving at this conclusion, the court construed the pleading, styled as a petition for a writ of habeas corpus, as a motion to vacate sentence pursuant to 28 U.S.C. § 2255. The court explained that a motion to vacate sentence pursuant to 28 U.S.C. § 2255 must be filed in the court which imposed the sentence. 28 U.S.C. § 2255(a). This court has no record that the movant was convicted in this district. It appeared from the motion that he was convicted and sentenced by a court within the Eighth Circuit. Accordingly, the court granted movant 20 days

1 to file an amended motion demonstrating that he challenges a conviction and sentence imposed
2 in this court. The court also warned him that failure to comply with that order would result in a
3 recommendation that this action be dismissed. Movant has not responded to that order. It
4 appears that movant concedes that this court lacks jurisdiction to entertain his motion to vacate
5 sentence pursuant to 28 U.S.C. § 2255.

6 Accordingly, it is hereby RECOMMENDED that this action be dismissed on the ground
7 that this court lacks jurisdiction over the motion to vacate sentence filed pursuant to 28 U.S.C.
8 § 2255.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
14 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
15 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: October 22, 2009.

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18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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