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

MICHAEL AARON WITKIN,

Petitioner,

No. CIV S-10-0091 GEB DAD P

vs.

JAMES A. YATES, Warden,

Respondent.

ORDER

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Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a judgment of conviction entered against him in the Sacramento County Superior Court in 2005 for resisting an executive officer by use of force and violence in violation of California Penal Code § 69. On January 30, 2013, this court issued findings and recommendations recommending, *inter alia*, that this action be dismissed as barred by the applicable statute of limitations.<sup>1</sup> On February 15, 2013, petitioner filed objections to those findings and recommendations (ECF No. 70), and on February 26, 2013, petitioner filed an amendment to those objections (ECF No. 71). On March 6, 2013, the assigned District Judge adopted the findings and recommendations in full (ECF No. 72). Judgment was

<sup>1</sup> Specifically, in relevant part the court recommended that respondent’s August 16, 2010 motion to dismiss this action as time-barred (ECF No. 18) be granted.

1 entered on the same day (ECF No. 73). On March 12, 2013, petitioner filed a motion for  
2 reconsideration by this court of the findings and recommendations in light of his February 15,  
3 2013 and February 26, 2013 objections (ECF No. 74). The January 30, 2013 findings and  
4 recommendations have been adopted in full by the district court after de novo review of this  
5 action, including the objections to which petitioner refers in the present motion. (See Order filed  
6 Mar. 6, 2013 (ECF No. 72).)

7           Petitioner's motion is signed and dated March 10, 2013. Although it is not clear,  
8 it does not appear that the motion was prepared after petitioner received the district court's order  
9 adopting the findings and recommendations in full. Petitioner's motion for reconsideration by  
10 this court is mooted by the district court's March 6, 2013 order adopting the findings and  
11 recommendations. Petitioner's motion for reconsideration will therefore be denied.

12           On March 13, 2013, petitioner filed a motion for extension of time to file a notice  
13 of appeal (ECF No. 78). On April 3, 2013, petitioner timely filed a notice of appeal (ECF No.  
14 82), which has been processed to the United States Court of Appeals for the Ninth Circuit and is  
15 pending before that court as USCA Case Number 13-15646. Petitioner's motion for extension of  
16 time filed with this court is therefore moot and will be denied.

17           On March 13, 2013, petitioner also filed a motion for preliminary injunction and  
18 temporary restraining order (ECF No. 75). Therein petitioner seeks injunctive relief concerning  
19 his right of access to the courts. As noted above, judgment in this action was entered on March  
20 6, 2013 and jurisdiction over this action was transferred to the United States Court of Appeals for  
21 the Ninth Circuit when petitioner filed his notice of appeal. See Griggs v. Provident Consumer  
22 Discount Co., 459 U.S. 56, 58 (1982). This court does not have jurisdiction to act on the motion  
23 for injunctive relief in this action. For that reason, the motion will be denied without prejudice.

24           On April 1, 2013, petitioner filed a motion seeking the recusal of the undersigned  
25 pursuant to 28 U.S.C. § 455 (ECF No. 78). Petitioner has not shown grounds that warrant or  
26 require such recusal. Accordingly, that motion will be denied.

1 Finally, petitioner has filed two motions for leave to proceed in forma pauperis on  
2 appeal (ECF Nos 81 and 83.) Petitioner paid the filing fee in this court. Examination of the in  
3 forma pauperis application reveals that petitioner is unable to afford the costs of suit.  
4 Accordingly, the motions to proceed in forma pauperis will be granted. See 28 U.S.C.  
5 § 1915(a).<sup>2</sup>

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Petitioner's March 12, 2013 motion for reconsideration (ECF No. 74) is  
8 denied;
- 9 2. Petitioner's March 13, 2013 motion for injunctive relief (ECF No. 75) is  
10 denied without prejudice;
- 11 3. Petitioner's March 13, 2013 motion for extension of time (ECF No. 76) is  
12 denied;
- 13 4. Petitioner's April 1, 2013 motion for recusal (ECF No. 78) is denied;
- 14 5. Petitioner's April 1, 2013 and April 2, 2013 motions to proceed in form  
15 pauperis (ECF Nos. 81 and 83) are granted; and
- 16 6. The Clerk of the Court is directed to send a copy of this order to the United  
17 States Court of Appeals for the Ninth Circuit.

18 DATED: June 18, 2013.

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22 DALE A. DROZD  
23 UNITED STATES MAGISTRATE JUDGE

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25 <sup>2</sup> The decision to grant leave to proceed in forma pauperis on appeal is not inconsistent with  
26 the district court's decision to decline to issue a certificate of appealability in this action. See  
Gardner v. Pogue, 558 F.2d 548, 551 (9th Cir. 1977).