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

NORMAN CHARLES PICKETT, JR.,

Petitioner,

No. 2:10-cv-2223 KJN P

vs.

RANDY GROUNDS, Warden,

Respondent.

ORDER and FINDINGS AND
RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 26, 2010, petitioner was directed to submit an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 or pay the appropriate filing fee. On September 16, 2010, petitioner filed a motion to proceed in forma pauperis.

Examination of the in forma pauperis affidavit 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).

The court's 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 was filed on September 14, 1998, and was denied on the merits on

1 November 2, 2001. On August 16, 2010, petitioner filed a document styled, “Application for
2 Leave to File Second or Successive Petition,” which is addressed to the United States Court of
3 Appeals for the Ninth Circuit, but was submitted to the instant court for filing.

4 Before petitioner can proceed with the instant application he must move in the
5 United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to
6 consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's application for writ of
7 habeas corpus must be dismissed without prejudice to its refiling upon obtaining authorization
8 from the United States Court of Appeals for the Ninth Circuit. The Clerk of the Court will be
9 directed to forward petitioner’s August 16, 2010 motion to the United States Court of Appeals
10 for the Ninth Circuit, along with a copy of the August 16, 2010 petition.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Petitioner’s September 16, 2010 motion to proceed in forma pauperis is
13 granted;

14 2. The Clerk of Court shall forward petitioner’s August 16, 2010 motion (dkt. no.
15 2) and a copy of the August 16, 2010 petition to the United States Court of Appeals for the Ninth
16 Circuit; and

17 3. The Clerk of Court is directed to randomly assign a district judge.

18 IT IS RECOMMENDED that this action be dismissed without prejudice.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
21 one days after being served with these findings and recommendations, petitioner may file written
22 objections with the court. The document should be captioned “Objections to Magistrate Judge's
23 Findings and Recommendations.” Petitioner is advised that failure to file objections within the

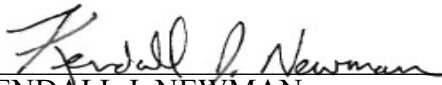
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1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 DATED: September 23, 2010
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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE

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