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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

10   RICHARD N. BROWN,

11   Petitioner,   No. CIV S-10-2679 WBS KJM P

12   vs.

13   VINCENT CULLEN,

14   Respondent.   FINDINGS AND RECOMMENDATIONS

15   _____/

16   Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of

17   habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis

18   pursuant to 28 U.S.C. § 1915.

19   Examination of the in forma pauperis affidavit reveals that petitioner is unable to

20   afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is

21   granted. See 28 U.S.C. § 1915(a).

22   The court's records reveal that petitioner has previously filed an application for a

23   writ of habeas corpus attacking the conviction and sentence challenged in this case. See No.

24   CIV-S-99-0241 WBS GGH P. Before petitioner can proceed with the instant application he

25   must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing

26   the district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's

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1   application must be dismissed without prejudice to its refiling upon obtaining authorization from

2   the United States Court of Appeals for the Ninth Circuit.

3   Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed

4   without prejudice.

5   These findings and recommendations are submitted to the United States District

6   Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty-

7   one days after being served with these findings and recommendations, petitioner may file written

8   objections with the court. The document should be captioned "Objections to Magistrate Judge's

9   Findings and Recommendations." Petitioner is advised that failure to file objections within the

10 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951

11 F.2d 1153 (9th Cir. 1991).

12 DATED: November 9, 2010.

14 _____
    U.S. MAGISTRATE JUDGE

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