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

ROWEE LEE BROWN,

Petitioner,

No. 2:10-cv-3458 JAM JFM (HC)

vs.

J.D. HARTLEY,

Respondent.

ORDER

_____ /

Petitioner is a state prisoner proceeding pro se with this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 25, 2011, this court issued findings and recommendations recommending that this action be dismissed as barred by the statute of limitations. On April 7, 2011, petitioner filed a motion for an extension of time to file objections to the findings and recommendations, which was granted by order filed April 20, 2011. On May 12, 2011, petitioner filed a request for voluntary dismissal of this action without prejudice, apparently to return to state court to develop and exhaust claims for relief. On May 18, 2011, respondent filed a statement of non-opposition to the request. Therein, respondent affirmatively states that he is not waiving any affirmative defense should petitioner return to federal court to seek habeas corpus relief from the conviction and sentence challenged in this action.

1 Good cause appearing, IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed March 25, 2011 are vacated;

3 2. Pursuant to the stipulation of the parties, petitioner's May 12, 2011 motion for
4 voluntary dismissal is granted; and

5 3. This action is dismissed without prejudice. See Fed. R. Civ. P. 41(a); Rule 12,
6 28 U.S.C. foll. § 2254.

7 DATED: May 25, 2011.

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10 UNITED STATES MAGISTRATE JUDGE

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