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

BARRY DEWAYNE WOODS,

Petitioner,

No. 2:10-cv-3489 LKK DAD (HC)

vs.

A. HEDGEPEETH, et al.,

Respondents.

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the \$5.00 filing fee for this action.

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the same conviction and sentence that petitioner seeks to challenge in this habeas action. The previous application for federal habeas relief was filed with this court on September 24, 2001, and was denied as barred by the statute of limitations on September 9, 2003. Before petitioner can proceed with the instant application for habeas relief he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the second or successive application. See 28 U.S.C. § 2244(b)(3); see also McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009) (“dismissal of a

1 section 2254 habeas petition for failure to comply with the statute of limitations renders
2 subsequent petitions second or success for purposes of the AEDPA, 28 U.S.C. §2244(b).”).
3 Therefore, petitioner’s application must be dismissed without prejudice to its refiling upon
4 obtaining authorization from the United States Court of Appeals for the Ninth Circuit.

5 In accordance with the above, IT IS HEREBY RECOMMENDED that this action
6 be dismissed without prejudice.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
9 days after being served with these findings and recommendations, petitioner may file written
10 objections with the court. The document should be captioned “Objections to Magistrate Judge's
11 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
12 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
13 F.2d 1153 (9th Cir. 1991).

14 DATED: April 1, 2011.

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17 _____
18 DALE A. DROZD
19 UNITED STATES MAGISTRATE JUDGE

19 DAD:12
20 wood3489.success