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

CARLTON LEE AUDETTE,

Petitioner,

No. CIV S-11-1343 GGH (TEMP) P

vs.

GARY SWARTHOUT,

Respondent.

ORDER and

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /  
Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

Court records for case number CIV-S-06-0738 JWS P reveal that petitioner previously filed a petition for a writ of habeas corpus attacking the conviction and sentence challenged in this case. The previous petition was filed on April 5, 2006, and was denied on the merits on January 29, 2009. Before petitioner can proceed with the instant successive petition, he must obtain authorization from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's habeas petition must be dismissed without prejudice to its refile upon obtaining the required authorization.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district court judge to this case; and

1 IT IS HEREBY RECOMMENDED that this action be dismissed without  
2 prejudice.

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

10 DATED: June 6, 2011

11 /s/ Gregory G. Hollows

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13 GREGORY G. HOLLOWES  
14 UNITED STATES MAGISTRATE JUDGE

14 GGH:kc  
15 aude1343.suc