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

ALEXANDER LEES,

Petitioner,

No. 2:11-cv-01422-DAD P

vs.

A. HEDGEPEETH,

Respondent.

ORDER

\_\_\_\_\_ /

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 consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c). See Doc. No. 3. Before the court is petitioner’s second amended petition.

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the same 1989 Solano County Superior Court judgment of conviction and sentence which he seeks to challenge in this federal habeas proceeding. (See Lees v. Borg, Case No. 2:90-cv-01599-WBS-GGH P.) Petitioner’s previous federal habeas application was filed in this court on December 26, 1990, and was denied on the merits on January 13, 1993. In light of that prior action and ruling, before petitioner can proceed with the instant federal habeas application he must move in the United States Court of Appeals for the

1 Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C.  
2 § 2244(b)(3). Therefore, petitioner's second amended petition must be dismissed without  
3 prejudice to its refiling upon his obtaining authorization from the United States Court of Appeals  
4 for the Ninth Circuit.

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

7 DATED: October 15, 2012.

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10 DALE A. DROZD  
11 UNITED STATES MAGISTRATE JUDGE

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