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

JOSEPH A. SHERMAN,

Petitioner,

No. CIV-S-11-1537 CKD P

vs.

YOLO COUNTY SHERIFF,

Respondent.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. He challenges two Yolo County convictions entered in 2009 for refusing to obey a California Highway Patrol officer. Petitioner was sentenced to 180 days in the Yolo County Jail. It is not disputed that petitioner was discharged from his sentence well before this action was filed. That being the case, respondent moves to dismiss.

Under the express language of 28 U.S.C. § 2254, the court can only entertain a petition for writ of habeas corpus if the petitioner is “in custody pursuant to the judgment of a state court . . .” Petitioner is not incarcerated or on probation as a result of his 2009 Yolo County convictions, nor does it appear that there are any express restraints on his liberty because of those convictions. Therefore, respondent is correct that this action should be dismissed. Petitioner opposes respondent’s motion to dismiss, but the arguments raised in his opposition (e.g. the “in

1 custody” requirement is met because petitioner’s habeas petition was not filed beyond the
2 applicable limitations period) do not alter the conclusion that respondent is legally correct.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a
4 district court judge to this case.

5 IT IS HEREBY RECOMMENDED that:

- 6 1. Respondent’s October 6, 2011 motion to dismiss be granted; and
7 2. This case be closed.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
10 one days after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 “Objections to Magistrate Judge’s Findings and Recommendations.” In his objections petitioner
13 may address whether a certificate of appealability should issue in the event he files an appeal of
14 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
15 court must issue or deny a certificate of appealability when it enters a final order adverse to the
16 applicant). Any reply to the objections shall be served and filed within fourteen days after
17 service of the objections. The parties are advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
19 F.2d 1153 (9th Cir. 1991).

20 Dated: March 22, 2012

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22 CAROLYN K. DELANEY
23 UNITED STATES MAGISTRATE JUDGE

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25 sher1537.157