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

ERIC WILTON BURTON

Petitioner,

No. CIV S-11-1616 MCE CKD P

vs.

MATTHEW CATE

ORDER AND

FINDINGS AND RECOMMENDATIONS

Respondents.

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus under 28 U.S.C. § 2254. On October 7, 2011, the court dismissed the petition because it attacked a judgment already on collateral review in the Southern District of California. In so ruling, the court did not grant petitioner his request to proceed in forma pauperis. Petitioner appealed the dismissal to the Ninth Circuit. That court also denied his request to proceed in forma pauperis, and it dismissed his appeal when petitioner failed to pay the filing fee. See Docket No. 21.

Petitioner has now filed a motion seeking this court’s assistance in meeting his obligation to pay the filing fees necessary to restore his appeal. The motion is essentially a request for reconsideration of petitioner’s initial motion to proceed in forma pauperis. It is

1 without merit and will be denied.

2           Petitioner has also moved to vacate the court's judgment of dismissal. It too is  
3 without merit and should be denied.

4           Accordingly, IT IS HEREBY ORDERED that the motion to be billed for appeal  
5 filing fees (Docket No. 22) is denied.

6           IT IS RECOMMENDED that the motion to vacate judgment (Docket No. 23) be  
7 denied.

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, petitioner may file written  
11 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
12 Findings and Recommendations." Petitioner is advised that failure to file objections within the  
13 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
14 F.2d 1153 (9th Cir. 1991).

15 Dated: April 16, 2012

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17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE  
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