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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CECIL JEROME HATCHETT,
Petitioner,
v.
GONZALEZ,
Respondent.

No. 2:12-cv-02228 MCE DAD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an amended application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. The handwritten petition now before the court appears to present claims of: prosecutorial misconduct in failing to disclose exculpatory evidence to the defense; ineffective assistance of defense counsel; and that petitioner’s no contest plea was not knowingly and voluntarily made.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the 1994 judgment of conviction entered against him in the Yolo County Superior Court following his no contest plea to first degree murder. That is the same judgment

1 of conviction which petitioner seeks to challenge in this subsequently filed federal habeas action.
2 Petitioner's previous application was filed with this court on February 26, 1998, and federal
3 habeas relief was denied on the merits on October 6, 2003. See Hatchett v. Hubbard, Case No.
4 2:98-cv-00345 WBS JFM P. More importantly, the same claims that petitioner attempts to
5 present now were presented in his prior federal habeas application and were rejected. See Id. at
6 Doc. Nos. 96 & 99.)¹

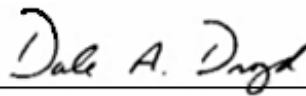
7 Because the claims presented in this second or successive petition were presented by
8 petitioner in his prior habeas petition, this petition must be summarily dismissed. 28 U.S.C. §
9 2244(b)(1) ("A claim presented in a second or successive habeas corpus application under section
10 2254 that was presented in a prior application shall be dismissed.").

11 In accordance with the above, IT IS HEREBY ORDERED that petitioner's September 14,
12 2012 application to proceed in forma pauperis (ECF No. 7) is granted; and

13 IT IS RECOMMENDED that this action be dismissed.

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

21 Dated: September 17, 2013

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23 _____
24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE

24 DAD:4
25 hatc2228.success

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27 _____
28 ¹ Indeed petitioner was denied a certificate of appealability by the Ninth Circuit in connection with the earlier federal habeas action. Case No. 2:98-cv-00345 WBS JFM P, Doc. No. 126.