

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

THOMAS EUGENE MOORE,

Petitioner,

No. 2:13-cv-0182 JFM P

vs.

K. CHAPPELL, Warden,

ORDER AND

Respondent.

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an 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.

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 conviction and sentence challenged in this case. See Case No. 2:02-cv-0007 JAM DAD P. The previous application was filed on January 3, 2002, and was denied on the merits on April 1, 2011. On November 8, 2012, the United States Court of Appeals denied petitioner’s request for certificate of appealability. Before petitioner can proceed

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

6 In accordance with the above, IT IS HEREBY ORDERED that:

7 1. The Clerk of the Court is directed to assign this action to a United States
8 District Judge;

9 2. Petitioner's application to proceed in forma pauperis is granted; and

10 IT IS HEREBY RECOMMENDED that this action be dismissed without
11 prejudice.

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

19 DATED: February 6, 2013.

20
21 
22 UNITED STATES MAGISTRATE JUDGE

23 12
24 moor0182.succ