

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

AARON PARNELL STONE,

Petitioner,

No. 2:13-cv-0518 GGH F

VS.

KIMBERLY HOLLAND,

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. (Stone v. Martel, CIV-10-3454 (KJM GGH P). The previous application was filed on December 27, 2010, and was denied on the merits (timeliness) on March 26, 2012. The court's records reflect that since Stone v. Martel was decided, petitioner has filed two other petitions in this court

1 challenging the same 2006 conviction. See Stone v. Cates, case no. 12-cv-2174 GEB GGH P
2 (filed August 20, 2012 and dismissed without prejudice as successive on October 17, 2012);
3 Stone v. Superior Court of California, County of Sacramento, case no. 12-cv-2986 AC (filed
4 December 7, 2012 and dismissed without prejudice as successive on February 14, 2013).

5 The current petition represents a successive challenge to the same 2006 conviction
6 at issue in each of petitioner's prior petitions. Accordingly, before petitioner can proceed with
7 the instant application he must move in the United States Court of Appeals for the Ninth Circuit
8 for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3).
9 Therefore, petitioner's application must be dismissed without prejudice to its refiling upon
10 obtaining authorization from the United States Court of Appeals for the Ninth Circuit.

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

12 1. Petitioner's application to proceed in forma pauperis is granted; and
13 2. The Clerk is directed to assign a district judge to this case.

14 IT IS HEREBY RECOMMENDED that this action be dismissed without
15 prejudice.

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

23 DATED: April 9, 2013

24
25 /s/ Gregory G. Hollows
26 UNITED STATES MAGISTRATE JUDGE
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