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

KELLY WILSON,

Petitioner,

No. 2:13-cv-0783 CKD P

vs.

PEOPLE OF CALIFORNIA,

ORDER AND

Respondent.

FINDINGS & RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Petitioner challenges his 1996 conviction and sentence.¹ Court records indicate that petitioner has filed prior petitions in this court challenging his 1996 conviction and sentence. See Wilson v. Grounds, No. 2:12-cv-0305 WBS KJN P (E.D. Cal.), Dkt. No. 17 (summarizing

¹ In 1996, petitioner was convicted in the Sutter County Superior Court for multiple sexual offenses, resulting in a sentence of 175 years to life. See Wilson v. People of California, No. 2:13-cv-0683 CKD P (E.D. Cal.), Dkt. No. 4.

1 prior cases). The first of these petitions was filed on September 1, 1999 and was denied on the
2 merits on April 26, 2004. Wilson v. Fairman, No. 2:99-cv-1711 JKS (E.D. Cal.), Dkt. No. 34.
3 The dismissal was with prejudice. Id.

4 A petition is second or successive if it makes “claims contesting the same custody
5 imposed by the same judgment of a state court” that the petitioner previously challenged, and on
6 which the federal court issued a decision on the merits. Burton v. Stewart, 549 U.S. 147, 153
7 (2007); see also Slack v. McDaniel, 529 U.S. 473, 485-486 (2000). “Before a second or
8 successive application . . . is filed in the district court, the applicant shall move in the appropriate
9 court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C.
10 § 2244(3)(A). Without an order from the appellate court, the district court is without jurisdiction
11 to consider a second or successive petition. See Burton, 549 U.S. at 152, 157. As petitioner
12 offers no evidence that the Ninth Circuit Court of Appeals has authorized this court to consider a
13 second or successive petition challenging his 1996 conviction, this action should be dismissed
14 for lack of jurisdiction.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Petitioner’s application to proceed in forma pauperis is granted; and
- 17 2. The Clerk of the Court shall assign a district judge to this action.

18 IT IS HEREBY RECOMMENDED that this action be dismissed for lack of
19 jurisdiction.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner
25 may address whether a certificate of appealability should issue in the event he files an appeal of
26 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district

1 court must issue or deny a certificate of appealability when it enters a final order adverse to the
2 applicant). Petitioner is advised that failure to file objections within the specified time may
3 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
4 1991).

5 Dated: April 29, 2013

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7 _____
8 CAROLYN K. DELANEY
9 UNITED STATES MAGISTRATE JUDGE

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