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

PHILLIP ANTHONY PETERSON,

Petitioner,

No. 2:13-cv-0860 KJN P

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

ORDER

_____/

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis. Petitioner has consented to the jurisdiction of the undersigned.

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).

The court’s records reveal that petitioner previously filed an application for a writ of habeas corpus attacking the 1998 conviction and sentence challenged in this case. (Case No. 2:02-CV-1720 FCD DAD P.) The previous application was filed on August 14, 2002, and was denied on the merits on September 21, 2006. Before petitioner can proceed with the instant

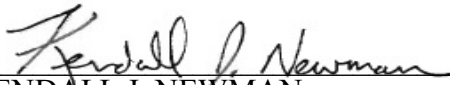
1 application he must move in the United States Court of Appeals for the Ninth Circuit for an order
2 authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore,
3 petitioner's application must be dismissed without prejudice to its refiling upon obtaining
4 authorization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

5 Petitioner has filed a motion for the appointment of counsel. Because this action
6 is dismissed, the motion for appointment of counsel is denied.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Petitioner's application to proceed in forma pauperis (ECF No. 3) is granted;
- 9 2. Petitioner's motion for appointment of counsel (ECF No. 4) is denied;
- 10 3. This action is dismissed without prejudice.

11 DATED: May 23, 2013

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14 KENDALL J. NEWMAN
15 UNITED STATES MAGISTRATE JUDGE

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