

1 8, 2013. The instant petition was filed on May 31, 2013.

2 To the extent petitioner again seeks to raise a challenge to his 2007 conviction, he must
3 move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the
4 district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's
5 application must be dismissed without prejudice to its re-filing upon obtaining authorization from
6 the United States Court of Appeals for the Ninth Circuit.

7 To the extent petitioner seeks to challenge his 2003 conviction and sentence, petitioner's
8 challenge must fail. The 2003 judgment was reversed and remanded. Such a disposition leaves
9 nothing to challenge, because, under California law, the reversal placed the parties into the same
10 position as if the cause had never been tried. E.g., People v. Phillips, 75 Cal. App. 2d 381 (1969)
11 (defendant who obtains reversal subjects himself to retrial that may reach same result), cert.
12 denied, 396 U.S. 1021(1970); People v. Murphy, 59 Cal.2d 818 (1963); Oldum v. Duffy, 35
13 Cal.2d 562 (1950). Additionally, it is not clear how this court would have jurisdiction over such a
14 challenge, or how petitioner would be able to establish that he has a "personal stake" in the
15 outcome. See, e.g., Camreta v. Greene, 131 S.Ct. 2020 (2011) (petitioner must show that he has
16 suffered an injury in fact, caused by the conduct complained of, that will be redressed by a
17 favorable decision).

18 In accordance with the above, IT IS HEREBY ORDERED THAT the Clerk assign a
19 district judge to this matter; and

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

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-eight
23 days after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
26 shall be served and filed within twenty-eight days after service of the objections. The parties are

27 ///

28 ///

1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: June 11, 2013

4 

5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE

7
8
9 AC:rb/jone1096.success
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28