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

DARRYL LEE BRISCOE,

Petitioner,

Case No. 2:13-cv-01185 KJN P

vs.

E. VALENZUELA,

Respondent.

ORDER

_____/

On June 24, 2013, the undersigned magistrate judge granted petitioner’s application to proceed in forma pauperis, and directed the assignment of a district judge to review the undersigned’s recommendation that this action be dismissed. (See ECF No. 10.) The court recommended dismissal because this action is premised on a successive application for writ of habeas corpus. As the court explained (id. at 1-2):

The court’s records reveal that petitioner previously filed an application for a writ of habeas corpus attacking the same conviction and sentence challenged in the instant case. See Briscoe v. Gonzales, Case No. 2:10-cv-02473 GGH P. The previous application was filed on August 19, 2010, and denied on the merits on September 24, 2012. The petition was denied as untimely, and the action dismissed with prejudice; the court determined that no certificate of appealability should issue.

Because the claims asserted in the instant application appear to be identical to those presented in petitioner’s prior application,

1 dismissal of the instant petition is warranted. 28 U.S.C. §
2 2244(b)(1). To the extent that petitioner may be seeking to assert a
3 new claim, he must first obtain, from the Ninth Circuit Court of
4 Appeals, an order authorizing the district court to consider the
5 application. 28 U.S.C. § 2244(b)(2), (3). Therefore, on this
6 ground too, petitioner's instant application must be dismissed.


7 Petitioner thereafter filed a notice of consent to proceed pursuant to the
8 jurisdiction of the undersigned magistrate judge for all purposes. 28 U.S.C. § 636(c); Local Rule
9 305(a). (See ECF No. 11.) In addition, petitioner filed a notice of change of address; petitioner
10 was previously incarcerated at the California Men's Colony, but is now detained at Atascadero
11 State Prison. (ECF No. 12.) Petitioner has filed no objections to the findings and
12 recommendations, and there is no basis for modifying the undersigned's prior conclusion that
13 this action should be dismissed.

14 For these reasons, and good cause appearing, IT IS HEREBY ORDERED that:

15 1. The Clerk of Court is directed to: (a) redesignate the undersigned's findings
16 and recommendations filed on June 24, 2013 (ECF No. 10) as an order; and (b) withdraw the
17 assignment of a district judge to this action; and

18 2. For the reasons stated in this court's order filed June 24, 2013 (ECF No. 10),
19 this action is dismissed without prejudice.

20 DATED: July 22, 2013

21 
KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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