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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KELON M. WILLIAMS,
Petitioner,
v.
GARY SWARTHOUT,
Respondent.

No. 2:13-cv-2198 CKD P

ORDER AND
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 2002 conviction in the El Dorado County Superior Court for second degree murder and other offenses, for which he was sentenced to a term of 55 years to life in prison. (ECF No. 1.) The court has examined its records and finds that petitioner challenged this same conviction in an earlier action, Williams v. High Desert State Prison, et al., No. 2:04-cv-2284 GEB DAD P (E.D. Cal.), wherein his petition for habeas corpus was denied on the

1 merits on December 1, 2008.

2 A petition is second or successive if it makes “claims contesting the same custody
3 imposed by the same judgment of a state court” that the petitioner previously challenged, and on
4 which the federal court issued a decision on the merits. Burton v. Stewart, 549 U.S. 147, 153
5 (2007). Before filing a second or successive petition in district court, a petitioner must obtain
6 from the appellate court “an order authorizing the district court to consider the application.” 28
7 U.S.C. § 2244(b)(3)(A). Without an order from the appellate court, the district court is without
8 jurisdiction to consider a second or successive petition. See Burton, 549 U.S. at 152, 157. As
9 petitioner offers no evidence that the appellate court has authorized this court to consider a second
10 or successive petition challenging his 2002 conviction, this action should be dismissed for lack of
11 jurisdiction.

12 Accordingly, IT IS HEREBY ORDERED THAT

- 13 1. Petitioner’s motion to proceed in forma pauperis (ECF No. 2) is granted; and
14 2. The Clerk of Court shall assign a district judge to this action.

15 IT IS HEREBY RECOMMENDED THAT:

- 16 1. The petition be dismissed for lack of jurisdiction; and
17 2. This case be closed.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
23 objections shall be served and filed within fourteen days after service of the objections. The
24 parties are advised that failure to file objections within the specified time may waive the right to
25 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 Dated: October 30, 2013

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28 CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE