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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE THOMAS DELUNA,
Petitioner,
v.
MARTIN BITER,
Respondents.

No. 2:14-cv-1247 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a California prisoner proceeding with counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Court records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. The previous application was filed on October 30, 2000, assigned case number 2:00-cv-2414 LKK JFM P, and denied on the merits on September 28, 2005.¹ Petitioner attempted to appeal the denial of his application, but the Ninth Circuit denied a certificate of appealability on June 30, 2006.

Before petitioner can proceed with the application filed in this case, he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing this court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s application must be

¹ Petitioner erroneously refers to this federal habeas corpus petition as an appeal to the California Supreme Court. ECF No. 1 at ¶ 25.

1 dismissed without prejudice to its refiling upon obtaining the required authorization from the
2 Ninth Circuit.²

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district
4 court judge to this case; and

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

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, petitioner may file written
9 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
10 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
11 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
12 F.2d 1153 (9th Cir. 1991).

13 Dated: May 27, 2014



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15 CAROLYN K. DELANEY
16 UNITED STATES MAGISTRATE JUDGE

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26 ² The application before the court is actually petitioner’s second successive application. The
27 application filed in 2:08-cv-1135 WBS KJM P was dismissed on February 4, 2010 also because
28 petitioner failed to obtain the required authorization from the Ninth Circuit before filing.
Petitioner also erroneously refers to this federal habeas corpus petition as an appeal to the
California Supreme Court. ECF No. 1 at ¶ 28.