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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRENCE BROWNLEE,
Petitioner,
v.
LYDIA ROMMORO,
Respondent.

No. 2: 14-cv-1249 KJM KJN P

ORDER and FINDINGS &
RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel, has filed a petition for a 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).

For the following reasons, the undersigned recommends that this action be dismissed.

In the June 27, 2014 amended petition, petitioner alleges that in 1980 he entered a plea bargain in Fresno Superior Court pursuant to which he was sentenced to fifteen years imprisonment and five years parole. (ECF No. 8.) Petitioner alleges that his plea bargain has since been violated because he is being treated as if he was sentenced to fifteen years to life. (Id.)

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1 Court records reveal that petitioner has filed several petitions containing the same claim as
2 raised in the instant petition or slightly altered variations. See 1: 05-cv-0949 REC SMS P, 1: 06-
3 cv-0320 OWW SMS P, 1: 09-cv-0765 OWW SMS P, 2: 10-cv-0925 LKK KJM P, 2: 10-cv-3478
4 GGH P. All of these petitions were denied as successive or as time barred.¹

5 Before petitioner can proceed with the instant application, he must move in the United
6 States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider
7 the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s application must be dismissed
8 without prejudice to its refiling upon obtaining authorization from the United States Court of
9 Appeals for the Ninth Circuit.

10 Accordingly, IT IS HEREBY ORDERED that petitioner’s application to proceed in forma
11 pauperis is granted; and

12 IT IS HEREBY RECOMMENDED that this action be dismissed.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, petitioner may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” If petitioner files objections,
18 he shall also address whether a certificate of appealability should issue and, if so, why and as to
19 which issues. A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
20 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. §

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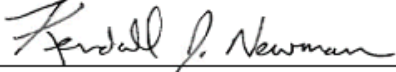
24 ¹ In his March 21, 2011 order dismissing petitioner’s action, Magistrate Judge Hollows observed
25 that in that case, petitioner alleged that he pled guilty to a 15 year sentence, not a life sentence.
26 See 2: 10-cv-3478 GGH P, ECF No. 14 at 2. “However, in his earlier petitions, petitioner
27 indicated that he pled guilty to an indeterminate sentence of 17 years to life.” (Id.) “In those
28 earlier petitions, he attacked the underlying plea while in the later petitions he began attacking the
length of his incarceration being longer than the alleged plea.” (Id.) “It appears that petitioner is
not being candid with the court.” (Id.)

1 2253(c)(3). Petitioner is advised that failure to file objections within the specified time may
2 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
3 1991).

4 Dated: July 18, 2014

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6 Br1249.dis


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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