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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER JOHNSON,
Petitioner,
v.
KEVIN CHAPPELL,
Respondent.

No. 2:14-cv-1506 CKD P

ORDER AND
FINDINGS AND 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 Sacramento County Superior Court for attempted murder, residential burglary, assault, and related charges. (ECF No. 1.) The court has examined its records and finds that petitioner challenged this same conviction in an earlier habeas petition, Johnson v. Evans, 2:05-cv-1223 JAM DAD (E.D. Cal.), which was denied on the merits on February 4, 2010.

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

11 Accordingly, IT IS HEREBY ORDERED THAT:

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

14 IT IS HEREBY RECOMMENDED THAT:

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

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

24 Dated: July 9, 2014

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE