

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 MYLVIN OTIS LEWIS,

12 Petitioner,

13 v.

14 J. LIZARRAGA,

15 Respondent.  
16

No. 2:14-cv-2643 JAM CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

17 Petitioner is a California prisoner proceeding pro se with an application for writ of habeas  
18 corpus under 28 U.S.C. ¶ 2254. On January 5, 2015, the court recommended that this action be  
19 dismissed because petitioner had not paid the filing fee or filed a request for leave to proceed in  
20 forma pauperis. Petitioner filed a motion for leave to proceed in forma pauperis on January 15,  
21 2015. Accordingly, the court's findings and recommendations will be vacated.

22 Examination of petitioner's request for leave to proceed in forma pauperis reveals that  
23 petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma  
24 pauperis will be granted. See 28 U.S.C. § 1915(a).

25 A review of the docket for case number 2:03-cv-2211 GEB EFB P reveals that petitioner  
26 challenged the convictions at issue in this action in that action as well. On March 23, 2010, the  
27 habeas petition in 2:03-cv-2211 GEB EFB P was denied. Before petitioner can proceed with the  
28 instant successive petition, he must obtain authorization from the Ninth Circuit Court of Appeals.

1 28 U.S.C. § 2244(b)(3). It does not appear petitioner has obtained the required authorization.  
2 Therefore, petitioner's habeas petition must be dismissed without prejudice to its re-filing upon  
3 petitioner obtaining the required authorization.

4 Accordingly, IT IS HEREBY ORDERED that:

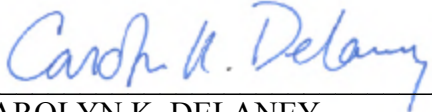
- 5 1. The court's January 5, 2015 findings and recommendations are vacated; and
- 6 2. Petitioner's motion to proceed in forma pauperis (ECF No. 10) is granted.

7 IT IS HEREBY RECOMMENDED that:

- 8 1. Petitioner's petition for writ of habeas corpus be dismissed without prejudice; and
- 9 2. This case be closed.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
12 after being served with these findings and recommendations, petitioner may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner  
15 may address whether a certificate of appealability should issue in the event he files an appeal of  
16 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district  
17 court must issue or deny a certificate of appealability when it enters a final order adverse to the  
18 applicant). Petitioner is advised that failure to file objections within the specified time may waive  
19 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: January 28, 2015

21   
22 CAROLYN K. DELANEY  
23 UNITED STATES MAGISTRATE JUDGE  
24