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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY A. MOSS,
Petitioner,
v.
KELI MITCHELL,
Respondent.

No. 2:15-cv-0108 GGH P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. Moss v. California Dept. of Corrections, 2:10-cv-2128 GEB CHS P. The previous application was filed on April 5, 2010, and was denied on the merits on June 14, 2012. Before petitioner can proceed with the instant application, he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s application must be dismissed without prejudice to its re-filing upon obtaining authorization from the United States Court of Appeals for the Ninth Circuit.

Accordingly, IT IS HEREBY ORDERED that the clerk of the court randomly assign a United States District Judge to this action.

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Accordingly, IT IS RECOMMENDED that this action be dismissed without prejudice.

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

Dated: January 22, 2015

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

Moss0108.succ