

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID C. PATKINS,
Petitioner,
v.
W. KNIPP,
Respondent.

No. 2:15-cv-01623 DB

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, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF Nos. 1; 8; 9.) As the court issues findings and recommendations below concerning the petition, the undersigned orders the Clerk’s Office to assign a United States District Judge to this case.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the prison disciplinary proceeding challenged in this case. The previous application was filed on June 28, 2012, and was denied on the merits on March 17, 2014.

Patkins v. Knipp, Case No. 2:12-cv-01718 JAM CMK, ECF Nos. 17; 18 (E.D. Cal. Mar. 17,


1 2014). Before petitioner can proceed with the instant application, he must move in the United
2 States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider
3 the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s application must be dismissed
4 without prejudice to its re-filing upon obtaining authorization from the United States Court of
5 Appeals for the Ninth Circuit.

6 In accordance with the above, IT IS HEREBY ORDERED that petitioner’s application to
7 proceed in forma pauperis (ECF Nos. 8; 9) is granted and that the Clerk’s Office assign a United
8 States District Judge to this case.

9 IT IS RECOMMENDED that this action be dismissed without prejudice.

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. The document should be captioned “Objections to Magistrate Judge’s
14 Findings and Recommendations.” Petitioner is advised that failure to file objections within the
15 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
16 F.2d 1153 (9th Cir. 1991).

17 Dated: May 22, 2017

18
19
20 
21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE

23
24
25
26
27
28
TIM-DLB:10

DB / ORDERS / ORDERS.PRISONER.HABEAS /Patk.1718.succ