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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLARK ROBINSON,  
  
                                Petitioner,  
  
          v.  
  
JOHN SOTO, WARDEN,  
  
                                Respondent.

No. 2:15-cv-1657 CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

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

Under Rule 4 of the Rules Governing Section 2254 Cases, the court is required to conduct a preliminary review of all petitions for writ of habeas corpus filed by state prisoners. The court must summarily dismiss a petition if it “plainly appears . . . that the petitioner is not entitled to relief. . .” The court has conducted the review required under Rule 4.

In his petition, the relief petitioner seeks is the reversal of a California Supreme Court decision denying a post-conviction motion for discovery. Under 28 U.S.C. § 2254(a) this court can consider a petition for writ of habeas corpus by a person in state custody “only on the ground

1 that he is in custody in violation of the Constitution [or other federal law].” Because there is no  
2 claim before the court that petitioner is in custody in violation of federal law, the court cannot  
3 entertain the petition filed by petitioner. For these reasons, petitioner’s petition for a writ of  
4 habeas corpus will be summarily dismissed.

5 In accordance with the above, IT IS HEREBY ORDERED that:

- 6 1. Petitioner’s request for leave to proceed in forma pauperis (ECF No. 2) is granted; and
- 7 2. The Clerk of the Court assign a district court judge to this case.

8 IT IS HEREBY RECOMMENDED that petitioner’s application for writ of habeas corpus  
9 be summarily dismissed.

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. Such a document should be captioned “Objections to Magistrate  
14 Judge’s Findings and Recommendations.” In his objections petitioner may address whether a  
15 certificate of appealability should issue in the event he files an appeal of the judgment in this  
16 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or  
17 deny a certificate of appealability when it enters a final order adverse to the applicant). Petitioner  
18 is advised that failure to file objections within the specified time may waive the right to appeal the  
19 District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: August 14, 2015

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22 CAROLYN K. DELANEY  
23 UNITED STATES MAGISTRATE JUDGE

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