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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PRESTON ALONZO HOWELL,  
Petitioner,  
v.  
RONALD A. BECKLEY,  
Respondent.

No. 2:16-cv-1812 GEB 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. On September 16, 2016, the court recommended that this action be dismissed for petitioner’s failure to file a completed application to proceed in forma pauperis. A completed application to proceed in forma pauperis has now been filed by petitioner. Therefore, the court will vacate the September 16, 2016 findings and recommendations.

Examination of petitioner’s request to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave 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 must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

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1 A review of court records reveals petitioner has already challenged the convictions and  
2 sentences at issue in this action in 2:02-cv-1376 GEB JFM P. Therefore, before petitioner can  
3 proceed with the instant successive petition,<sup>1</sup> he must obtain authorization from the United States  
4 Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 2244(b)(3). Good cause  
5 appearing, the court will recommend that this action be dismissed without prejudice to petitioner  
6 refiling after he obtains the required authorization.

7 Accordingly, IT IS HERBY ORDERED that

- 8 1. The court's September 16, 2016 findings and recommendations are vacated; and
- 9 2. Petitioner's request for leave to proceed in forma pauperis (ECF No. 10) is granted;

10 IT IS HEREBY RECOMMENDED that petitioner's application for writ of habeas corpus  
11 be dismissed without prejudice.

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

22 Dated: October 13, 2016

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>1</sup> This is actually the fourth time petitioner has filed a successive petition with respect to the  
28 convictions and sentence at issue. The three previous case numbers are 2:07-cv-2536 GEB JFM  
P, 2:12-cv-1901 KJM CMK P, and 2:16-cv-0828 CKD P.