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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID GRIFFIN,

 Petitioner,

 v.

SACRAMENTO COUNTY SUPERIOR
COURT,

 Respondent.

No. 2:16-cv-2084 JAM CKD P

ORDER &
FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Petitioner has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, petitioner may proceed with this action in forma pauperis.

Petitioner challenges his conviction in the Sacramento County Superior Court for “one count of conspiracy to commit murder, one count of aggravated kidnapping, one count of premeditated attempted murder, one count of first degree residential burglary, and one count of active participation in a criminal street gang, which resulted in a sentence of 84 years to life[.]” (ECF No. 1 at 3.)

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1 Court records reveal that petitioner challenged this same conviction in an earlier action,
2 Griffin v. Gipson, No. 2:13-cv-2516 MCE GGH (E.D. Cal.), in which petitioner's habeas claims
3 were denied on the merits on March 11, 2015. (Id., ECF Nos. 20 & 21.)

4 A petition is second or successive if it makes "claims contesting the same custody
5 imposed by the same judgment of a state court" that the petitioner previously challenged, and on
6 which the federal court issued a decision on the merits. Burton v. Stewart, 549 U.S. 147, 153
7 (2007). Before filing a successive petition in district court, a petitioner must obtain from the
8 appellate court "an order authorizing the district court to consider the application." 28 U.S.C. §
9 2244(b)(3)(A). Without an order from the appellate court, the district court is without jurisdiction
10 to consider a second or successive petition. See Burton, 549 U.S. at 152, 157.

11 As petitioner offers no evidence that the appellate court has authorized this court to
12 consider a successive petition challenging his conviction, this action should be dismissed for lack
13 of jurisdiction.

14 Accordingly, IT IS HEREBY ORDERED that petitioner's request to proceed in forma
15 pauperis is granted.

16 IT IS HEREBY RECOMMENDED that the petition be dismissed for lack of jurisdiction.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, petitioner may file written
20 objections with the court. Such a document should be captioned "Objections to Magistrate
21 Judge's Findings and Recommendations." In his objections petitioner may address whether a
22 certificate of appealability should issue in the event he files an appeal of the judgment in this
23 case. Petitioner is advised that failure to file objections within the specified time may waive the
24 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 Dated: November 3, 2016

26 
27 CAROLYN K. DELANEY
28 UNITED STATES MAGISTRATE JUDGE