

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

ERIC LINELL SHELMIRE,
Petitioner,
v.
JOE LIZZARAGA,
Respondent.

No. 2:16-cv-2667 DB 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, together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

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 conviction and sentence challenged in this case. The previous application was filed on May 15, 2006, and was denied on the merits on July 30, 2009. 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

1 without prejudice to its re-filing upon obtaining authorization from the United States Court of
2 Appeals for the Ninth Circuit.


3 In accordance with the above, IT IS HEREBY ORDERED that

- 4 1. Petitioner's application to proceed in forma pauperis (ECF No. 2) is granted; and
- 5 2. The Clerk of the Court is directed to assign a district judge to this action.

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

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

14 Dated: March 8, 2017

15
16
17 
18 DEBORAH BARNES
19 UNITED STATES MAGISTRATE JUDGE
20
21

22 DLB:9
23 DLB1/prisoner-habeas/Shel2667.succ
24
25
26
27
28