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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RALPH D. MORELAND,
Petitioner,
v.
SANDRA ALFARO, Warden,
Respondent.

No. 2:16-cv-02700 GGH

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. 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 January 6, 2015, and was denied as successive, which itself referenced a Northern District, CA habeas, CO1-1470-MJJ, which had been dismissed as untimely, i.e., on the merits on March 1, 2016.¹ See Moreland v. Arnold, 2:15-cv-0286 KJM AC. The current petition represents a successive challenge to the same 1996 conviction at issue in petitioner’s prior petition. 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). In the absence

¹ The Northern District, CA petition was dismissed as time barred which is a decision on the merits. See McNabb v. Yates, 576 F.3d 1028, 1029-30 (9th Cir. 2009).

1 of such an order this court has no jurisdiction to address the present petition. Burton v. Stewart,
2 549 U.S. 147, 152 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001). Therefore,
3 petitioner's application must be dismissed without prejudice to its refiling upon obtaining
4 authorization from the United States Court of Appeals for the Ninth Circuit.

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a
6 United States District Judge to this action.

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

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

15 Dated: November 20, 2016

16 /s/ Gregory G. Hollows
17 UNITED STATES MAGISTRATE JUDGE

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