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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILLIP ANTHONY PETERSON,
Petitioner,
v.
S. HATTON,
Respondent.

No. 2:17-cv-0785 MCE DB P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se. On January 30, 2018, the court dismissed petitioner’s petition on the grounds that it is a successive petition. (ECF Nos. 7, 8.) Petitioner was informed that he must seek permission to file a successive petition from the Court of Appeals before he may proceed here.


On February 12, 2018, petitioner filed an “Application for Certificate of Appealability from District Court.” (ECF No. 10.) Petitioner does not need a certificate of appealability to apply to the Court of Appeals for permission to file a successive petition in the district court. See 9th Cir. R. 22-3(a); Rule 11, Rules Governing § 2254 Cases. Petitioner is advised to review Rule 22-3 of the Rules for the Ninth Circuit Court of Appeals for the requirements for applying for permission to file a successive petition.

Accordingly, IT IS HEREBY RECOMMENDED that petitioner’s February 12, 2018 Application for Certificate of Appealability be denied as unnecessary.

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

Dated: February 22, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:9
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