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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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

No. 2:17-cv-0785 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, case no. 2:02-cv-1720 FCD DAD, was filed on August 14, 2002, and was denied on the merits on September 21, 2006. 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

1 application must be dismissed without prejudice to its re-filing upon obtaining authorization from
2 the United States Court of 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. 6) is granted; and
- 5 2. The Clerk of the Court is directed to assign a district judge to this case.

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: December 14, 2017

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17 DEBORAH BARNES
18 UNITED STATES MAGISTRATE JUDGE
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