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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THEODORE ERVIN STITH,
Petitioner,
v.
WARDEN,
Respondent.

No. 2:17-cv-01064 CKD

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Examination of the motion to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the motion for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

Court records reveal that petitioner has previously filed a petition for a writ of habeas corpus attacking the conviction and sentence challenged in this case. See Stith v. McComber, 2:15-cv-0504 JAM DB (dismissed on August 11, 2016 for failure to comply with the statute of limitations). Before petitioner can proceed with the instant successive petition, he must obtain

1 authorization from United States Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. §
2 2244(b)(3). Because it does not appear that petitioner has obtained the required authorization,
3 petitioner's habeas petition must be dismissed.

4 Accordingly, IT IS HERBY ORDERED that

- 5 1. Petitioner's motion for leave to proceed in forma pauperis (ECF No. 3) is granted; and
- 6 2. The Clerk of the Court is directed to assign a district court judge to this case.

7 IT IS HEREBY 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." If petitioner files objections, he may also address whether a
13 certificate of appealability should issue and, if so, why and as to which issue(s). Where, as here,
14 the petition was dismissed on procedural grounds, a certificate of appealability "should issue if
15 the prisoner can show: (1) 'that jurists of reason would find it debatable whether the district court
16 was correct in its procedural ruling'; and (2) 'that jurists of reason would find it debatable
17 whether the petition states a valid claim of the denial of a constitutional right.'" Morris v.
18 Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
19 (2000)). Petitioner is advised that failure to file objections within the specified time may waive
20 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: June 6, 2017

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23 _____
24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE
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