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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY RAY BAKER,
Petitioner,
v.
STU SHERMAN,
Respondent.

No. 2:17-cv-2096 CKD P

ORDER

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 request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Examination of the request to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

On October 30, 2017 petitioner consented to have the undersigned United States Magistrate Judge conduct all further proceedings in this matter pursuant to 28 U.S.C. § 636(c).

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 two separate petitions for a writ of habeas corpus attacking the 1997 conviction and sentence challenged in this case. See Baker v.

1 LaMarque, Case No. 2:03-cv-2441 GEB GGH P; Baker v. Virga, Case No. 2:11-cv-1317 JAM
2 KJN P. The first application was filed on November 24, 2003, and was dismissed as barred by
3 the statute of limitations on June 25, 2004. Baker v. LaMarque, Case No. 2:03-cv-2441 GEB
4 GGH P. “[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of
5 limitations renders subsequent petitions second or successive for purposes of the AEDPA, 28
6 U.S.C. § 2244(b).” McNabb v. Yates, 576 F.3d 1028 (9th Cir. 2009). It was for this reason that
7 petitioner’s second habeas petition filed on May 16, 2011 was dismissed without prejudice.

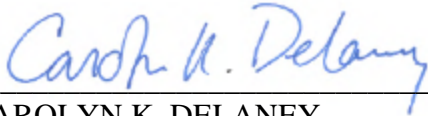
8 Baker v. Virga, Case No. 2:11-cv-1317 JAM KJN P.

9 Before petitioner can proceed with the instant successive petition, he must obtain
10 authorization from United States Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. §
11 2244(b)(3). Because it does not appear that petitioner has obtained the required authorization,
12 petitioner’s habeas petition must be dismissed.

13 Accordingly, IT IS HERBY ORDERED that

- 14 1. Petitioner’s request for leave to proceed in forma pauperis (ECF No. 2) is granted;
- 15 2. This action is dismissed without prejudice; and,
- 16 3. The court declines to issue a certificate of appealability pursuant to 28 U.S.C. § 2253.

17 Dated: November 6, 2017

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20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

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