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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVIS MICHAEL ORTIZ,
Petitioner,
v.
DAVID BAUGHMAN, Warden,
Respondent.

No. 2:18-cv-00255 AC P

ORDER and
FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. See ECF No. 1. Petitioner has not yet submitted an application to proceed in forma pauperis or pay the filing fee. See ECF No. 4. Petitioner has sought to confirm the court’s receipt of his consent to the jurisdiction of the undersigned magistrate judge, see ECF Nos. 3 (consent) & 6 (letter confirming consent),¹ and filed a motion for appointment of counsel, see ECF No. 5. However, because the instant petition for writ of habeas corpus is the second filed by petitioner challenging his 2012 conviction and sentence in the Butte County Superior Court, this action must be dismissed without prejudice to its re-filing should petitioner obtain authorization from the Ninth Circuit Court of Appeals.

¹ Notwithstanding petitioner’s consent to proceed before the undersigned magistrate judge for all purposes, under 28 U.S.C. § 636(c), the recommended dismissal of this case is directed to the assigned district judge pursuant 28 U.S.C. § 636(b)(1). See Williams v. King, 875 F.3d 500 (9th Cir. 2017).

1 The court's records reveal that petitioner previously filed a petition for writ of habeas
2 corpus attacking the same conviction and sentence challenged in the instant case.² The previous
3 petition was filed on March 30, 2016, and denied on the merits on March 20, 2018. See Ortiz v.
4 Baughman, Case No. 2:16-cv-00659 KJM CDK P. Before petitioner can proceed with the instant
5 petition, he must move in, and obtain from, the Ninth Circuit Court of Appeals, an order
6 authorizing the district court to consider the merits of his successive petition. See 28 U.S.C.
7 § 2244(b)(3). Absent such authorization, the instant petition must be dismissed without
8 prejudice. Id.


9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. This court's order filed February 22, 2018, ECF No. 4, is vacated as unnecessary;
- 11 2. Petitioner's request for appointment of counsel, ECF No. 5, is denied as moot; and
- 12 3. The Clerk of Court is directed to randomly assign a district judge to this action.

13 Further, IT IS HEREBY RECOMMENDED that this action be dismissed without
14 prejudice because premised on an unauthorized successive petition for writ of habeas corpus
15 under 28 U.S.C. § 2254.

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

23 DATED: March 22, 2018

24 
25 ALLISON CLAIRE
26 UNITED STATES MAGISTRATE JUDGE

27 ² A court may take judicial notice of its own records and the records of other courts. See MGIC
28 Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d
118, 119 (9th Cir. 1980).