

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES A. WIRTH,
Petitioner,
v.
STATE OF CALIFORNIA,
Respondent.

No. 2:18-cv-2142 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

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

As for the petition, petitioner has filed an original, and an amended petition. Good cause appearing, this action proceeds on the amended petition.

In the amended petition, petitioner asks that the court order certain California courts to “answer” issues presented in various actions for collateral relief brought by petitioner. However, while the court has the ability to entertain a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 based upon a claim that petitioner is in custody in violation of federal law, 28 U.S.C. § 2254(a), the court, generally speaking, has no authority to order a state court to address

////

1 any issue presented in a petition for collateral relief. Since the court has no ability to order the
2 relief sought, the court will recommend that petitioner's "petition for a writ of mandate"¹ be
3 denied.

4 In accordance with the above, IT IS HEREBY ORDERED that:

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

7 IT IS HEREBY RECOMMENDED that:

- 8 1. Petitioner's amended petition for a writ of mandate (ECF No. 4) be dismissed; and
- 9 2. This case be closed.

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

17 Dated: September 7, 2018

18 
19 _____
20 CAROLYN K. DELANEY
21 UNITED STATES MAGISTRATE JUDGE

22 1
23 wirt2142. mand

24
25
26
27 _____
28 ¹ Under California Code of Civil Procedure § 1085(a), a California Court, can issue a writ of
mandate to an inferior court "to compel the performance" of an act required under law.