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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVIS M. ORTIZ,
Petitioner,
v.
DAVID BAUGHMAN,
Respondent.

No. 2:19-cv-0407 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an amended application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254,¹ 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 2012 conviction and sentence challenged in this case. The previous application was filed on March 30, 2016, and was denied on the merits on March 20, 2018. See

¹ Petitioner’s original petition was filed in the United States District Court for the Northern District of Texas, which transferred the action to this court on March 4, 2019, because petitioner was convicted and is housed in the Eastern District of California. (ECF Nos. 9, 10.)

1 Ortiz v. Baughman, Case No. 2:16-cv-0659 KJM CKD P (E.D. Cal.). Before petitioner can
2 proceed with the instant application, he must move in the United States Court of Appeals for the
3 Ninth Circuit for an order authorizing the district court to consider the application. 28 U.S.C.
4 § 2244(b)(3). Therefore, petitioner's application must be dismissed without prejudice to its re-
5 filing upon obtaining authorization from the United States Court of Appeals for the Ninth
6 Circuit.² In other words, petitioner must obtain authorization from the Ninth Circuit before he
7 can re-file a petition for writ of habeas corpus attacking the 2012 conviction. Petitioner claims
8 that his request for permission to file a second or successive petition is pending in the Ninth
9 Circuit Court of Appeals (ECF No. 7 at 8), but he does not state that his request has been granted
10 or provide a copy of an order granting such permission by the Ninth Circuit.


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

- 12 1. Petitioner's application to proceed in forma pauperis (ECF No. 8) is granted;
- 13 2. The Clerk of the Court is directed to assign a district judge to this case; and

14 IT IS RECOMMENDED that this action be dismissed without prejudice.

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

22 Dated: March 11, 2019

23 
24 _____
KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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27 _____
28 ² Petitioner filed another challenge to his 2012 conviction in Ortiz v. California Attorney
General, Case No. 2:18-cv-1563 MCE DB P (E.D. Cal.), which was dismissed on January 2,
2019, because it was also premised on an unauthorized successive petition for writ of habeas
corpus. Id. (ECF No. 33.)