

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

BEAU HOUSTON GRAY,
Petitioner,
v.
C. KOEING,
Respondent.

No. 2:19-cv-1293 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application 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. Petitioner challenges his convictions for second degree murder and assault imposed by the Shasta County Superior Court in 2010.

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 applications for a writ of habeas corpus attacking the conviction and sentence challenged in this case. In 2013, petitioner filed a petition for a writ of habeas corpus challenging his 2010 convictions in Shasta County Superior Court, case no. 08F5142. Gray v. Foulk, No. 2:13-cv-0775 JKS (E.D. Cal.). The court denied that petition on the merits in August 2015. Id.

1 In 2017, petitioner again filed a habeas petition challenging the 2010 Shasta County
2 convictions. Gray v. Hatton, No. 2:17-cv-1172 TLN DMC P (E.D. Cal.). In 2018, the court
3 informed petitioner that in order to bring a second or successive petition, he must first obtain
4 leave to do so from the Ninth Circuit Court of Appeals. Id.

5 Petitioner filed the present petition in the Northern District of California on June 12, 2019.
6 (ECF No. 1.) Petitioner filed a second petition in that court on June 24. (ECF No. 6.) The
7 Northern District transferred the case to this court in July. (ECF Nos. 9-11.) Both of the petitions
8 filed by petitioner make clear that he is challenging the 2010 convictions in Shasta County
9 Superior Court no. 08F5142. (ECF No. 1 at 3; ECF No. 6 at 1.) None of petitioner's filings
10 demonstrate that he has obtained permission from the Ninth Circuit to file a successive petition.

11 Before petitioner can proceed with the instant application, he must move in the United
12 States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider
13 the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's application should be dismissed
14 without prejudice to its re-filing upon obtaining authorization from the Ninth Circuit.

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

- 16 1. Petitioner's application to proceed in forma pauperis (ECF No. 7) is granted; and
- 17 2. The Clerk of the Court shall randomly assign a district judge to this case.

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

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, petitioner may file written
22 objections with the court. The document should be captioned "Objections to Magistrate Judge's
23 Findings and Recommendations." Petitioner is advised that failure to file objections within the

24 ///

25 ///


26 ///

27 ///

28 ///

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 Dated: July 23, 2019

4
5 
6 DEBORAH BARNES
7 UNITED STATES MAGISTRATE JUDGE
8

9 DLB:9
10 DB/prisoner-habeas/gray1293.succ
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28