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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC CHARLES RODNEY KNAPP,  
Petitioner,  
v.  
RALPH DIAZ, CDCR Secretary,  
Respondent.

No. 2:19-cv-02066 GGH 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.

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).

Petitioner challenges his 1993 conviction in the Sacramento County Superior Court in Case No. CR 118548 for multiple counts of forcible acts of sexual penetration, battery, assault with a deadly weapon, rape, and oral copulation, and one count of burglary. ECF No. 1 at 1. The court’s records reveal that petitioner has previously filed an application for a writ of habeas corpus attacking the conviction and sentence challenged in this case. The previous application was filed on March 21, 2008 and was denied on the merits on September 26, 2011. See Knapp v.

1 Warden of Salinas Valley State Prison, 2:08-cv-1040 JFM. Moreover, this appears to be  
2 petitioner's second successive petition. See Knapp v. Unknown, 2:16-cv-2900 JAM CFK.<sup>1</sup> As  
3 petitioner was informed previously, before he can proceed with the instant application, he must  
4 move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the  
5 district court to consider the application. 28 U.S.C. § 2244(b)(3). Therefore, petitioner's  
6 application must be dismissed without prejudice to its re-filing upon obtaining authorization from  
7 the United States Court of Appeals for the Ninth Circuit.

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

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

11 Further, IT IS HEREBY RECOMMENDED that this action be dismissed as a second or  
12 successive habeas corpus application without prejudice to its re-filing with a copy of an order from  
13 the Ninth Circuit Court of Appeals authorizing petitioner to file a successive petition.

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

21 Dated: November 4, 2019

22 /s/ Gregory G. Hollows  
23 UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Petitioner had also filed a separate petition for writ of habeas corpus challenging his 1993 conviction on  
28 December 9, 2016, however, this case was dismissed for failure to timely amend his petition. Knapp v. Unknown,  
2:16-cv-2983 JAM CKD.