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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOVON SMITH,  
  
  Petitioner,  
  
          v.  
  
RALPH DIAZ,  
  
  Respondent.

No. 2:20-cv-00584 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. Petitioner has not, however, filed an in forma pauperis affidavit or paid the required filing fee (\$5.00). See 28 U.S.C. §§ 1914(a); 1915(a). Nevertheless, the undersigned will recommend this action be dismissed as a second or successive habeas corpus application.

Petitioner challenges his 2009 conviction in the Solano County Superior Court for assault on a child causing death. ECF No. 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 December 13, 2011 and was denied on the merits on January 14, 2014. See Smith v. Ken Clark, 2:11-cv-03312-MCE-GGH. Before petitioner can proceed with the instant application, he must move in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the

1 application. See 28 U.S.C. § 2244(b)(3). Therefore, petitioner’s application must be dismissed  
2 without prejudice to its re-filing upon obtaining authorization from the United States Court of  
3 Appeals for the Ninth Circuit.

4 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court  
5 randomly assign a district judge to this action.

6 Further, IT IS HEREBY RECOMMENDED that this action be dismissed as a second or  
7 successive habeas corpus application without prejudice to its refileing with a copy of an order from  
8 the Ninth Circuit Court of Appeals authorizing petitioner to file a successive petition.

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

16 Dated: April 1, 2020

17 /s/ Gregory G. Hollows  
18 UNITED STATES MAGISTRATE JUDGE  
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