

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

DANIEL STEVE DIXON,
Petitioner,
v.
JARED R. LOZANO, Warden,
Respondent.

No. 2:20-cv-00604 GGH P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, 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).

Petitioner challenges his 1981 conviction in the Sacramento County Superior Court for first-degree murder, robbery, and other related charges. 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 in 1988 and was denied on the merits on August 31, 1995. See Dixon v. Borg, 2:88-cv-01362-DFL-JFM.¹

¹ A court may take judicial notice of court filings and other matters of public record. See Burbank–Glendale–Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir.1998).

1 Before petitioner can proceed with the instant application, he must move in the United States
2 Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider the
3 application. See 28 U.S.C. § 2244(b)(3). In his petition, petitioner alleges newly discovered
4 evidence of his innocence that may prevent dismissal of his petition as second or successive.
5 “Even if a petitioner can demonstrate that he qualifies for one of [the] exceptions [to filing a
6 second or successive petition], he must seek authorization from the court of appeals before filing
7 his new petition with the district court.” Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008)
8 (citing 28 U.S.C. § 2244(b)(3)). Petitioner must request authorization to proceed on a successive
9 petition, Therefore, petitioner’s application must be dismissed without prejudice to its re-filing
10 upon obtaining authorization from the United States Court of Appeals for 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. 2) is granted; and
- 13 2. The Clerk of the Court shall assign this case to a district judge.

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

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

24 Dated: April 14, 2020

25 /s/ Gregory G. Hollows
26 UNITED STATES MAGISTRATE JUDGE