

MAR 14 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WILLIE COOLEY,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>C. WOFFORD,</p> <p>Respondent - Appellee.</p>

No. 12-17071

D.C. No. 1:12-cv-01164-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gary S. Austin, Magistrate Judge, Presiding

Submitted March 10, 2014**

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

California state prisoner Willie Cooley appeals pro se from the district court’s judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we vacate and remand.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

In his order dismissing with prejudice Cooley's habeas petition, the magistrate judge incorrectly stated that Cooley had consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). Because the record reflects that Cooley expressly declined to give such consent, the magistrate judge lacked authority to issue a final order dismissing with prejudice Cooley's habeas petition. *See* 28 U.S.C. § 636; Fed. R. Civ. P. 72. Accordingly, we vacate the judgment and remand for further proceedings.

In light of this disposition, we do not reach Cooley's contentions regarding the merits of his habeas petition.

VACATED and REMANDED.