

MAR 14 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIE COOLEY,

Petitioner - Appellant,

v.

C. WOFFORD,

Respondent - Appellee.

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.

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\* 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.**