

NOV 19 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FREEMAN WILLIAM STANTON,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>SAM LAW, Warden; ATTORNEY GENERAL OF THE STATE OF MONTANA,</p> <p>Respondents - Appellees.</p>
--

No. 08-35917

D.C. No. 2:08-cv-00057-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief Judge, Presiding

Submitted November 16, 2010**

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

Montana state prisoner Freeman William Stanton appeals 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 affirm.

* 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).

The district court properly dismissed Stanton’s petition as successive. We take judicial notice of: (1) the 1987 district court order adjudicating the merits of a habeas petition Stanton filed in 1986; and (2) this court’s memorandum disposition affirming the district court’s judgment dismissing the 1986 petition. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (stating that appellate courts generally “will not consider facts outside the record developed before the district court[, but] may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue”) (internal quotation marks and citations omitted). Because the instant petition challenges the same conviction which was the subject of Stanton’s 1986 petition, and because Stanton did not obtain an order from this court pursuant to 28 U.S.C. § 2244(b)(3)(A) prior to filing the successive petition, the district court properly dismissed the petition. *See Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per curiam). The district court committed no error in dismissing the petition rather than transferring it to this court. *See Allen v. Ornoski*, 435 F.3d 946, 958 (9th Cir. 2006). We affirm the district court.

We also construe Stanton’s appeal as a motion for an order authorizing the district court to consider his successive petition pursuant to 28 U.S.C.

§ 2244(b)(3)(A). *See Cooper*, 274 F.3d at 1274-75. So construed, we deny the motion because Stanton fails to make “a prima facie showing that the application satisfies the requirements of” § 2244(b)(2). *See* 28 U.S.C. § 2244(b)(3)(C).

AFFIRMED.