

SEP 03 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JACKIE RICHARD GREGG,

Petitioner - Appellant,

v.

BRIAN BELLEQUE,

Respondent - Appellee.

No. 09-35600

D.C. No. 1:07-cv-00984-OMP

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Submitted August 23, 2010**

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

Oregon state prisoner Jackie Richard Gregg appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition as second or successive. 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).

Relying on the “legitimate excuse” doctrine, Gregg contends that his petition is not second or successive within the meaning of the Antiterrorism and Effective Death Penalty Act because *Blakely v. Washington*, 542 U.S. 296 (2004), had not been decided at the at the time he filed his previous habeas petition. Because Gregg neither sought nor received authorization from this court before filing the instant petition, the district court was without jurisdiction to consider it. *See* 28 U.S.C. § 2244(b)(3)(A); *see also* *Burton v. Stewart*, 549 U.S. 147, 152-54 (2007).

To the extent Burton is applying for an order authorizing a second or successive petition, such request is denied. *See United States v. Cook*, 386 F.3d 949, 950 (2004) (denying an application for a second or successive § 2255 motion because “the Supreme Court has not made *Blakely* retroactive to cases on collateral review”).

AFFIRMED.