

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  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

RICHARD O'NEIL BRADFORD,  
Petitioner,  
v.  
F. GONZALEZ, Warden,  
Respondent.

No. CV 10-585-RGK (AGR)  
OPINION AND ORDER ON PETITION  
FOR WRIT OF HABEAS CORPUS

On January 27, 2010, Petitioner Richard O'Neil Bradford, proceeding *pro se*, filed a Petition for Writ of Habeas Corpus By a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254 in the Central District of California.

**I.**

**PROCEDURAL HISTORY**

Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records in a prior federal habeas corpus action brought by Petitioner: *Richard O'Neil Bradford v. L. Schulteis*, CV 08-1716 RGK (AGR) ("*Bradford I*").

The Petition challenges Petitioner's conviction and/or sentence of February 15, 2007. (Petition at 2.) Petitioner was convicted of two counts of selling a controlled substance. (*Bradford I*, Report and Recommendation (R&R) at 2.) On December 17,

1 2007, the California Court of Appeal affirmed the conviction. (Petition at 2-3.) On  
2 February 20, 2008, the California Supreme Court denied review without explanation.  
3 (Petition at 3; *Bradford I*, Report and Recommendation at 2.) Petitioner was sentenced  
4 to seven years in prison. (Petition at 2.) The Petition contains one ground for relief  
5 based on *Pitchess*.<sup>1</sup> (*Id.* at 5.)

6 In *Bradford I*, Petitioner filed a petition for writ of habeas corpus by a person in  
7 state custody on March 13, 2008. (Dkt. No. 1.) After Petitioner requested that the  
8 unexhausted grounds be dismissed, Petitioner challenged his conviction and sentence  
9 based on two grounds: (1) prosecutorial misconduct; and (2) trial court error in  
10 disposing of Petitioner’s *Pitchess* motion. (*Bradford 1*, R&R at 2.) On February 17,  
11 2009, the Court entered an Order Adopting Magistrate Judge’s Report and  
12 Recommendation and a Judgment denying the petition with prejudice. (Dkt. Nos. 74-  
13 75.) On February 20, 2009, Petitioner filed a Notice of Appeal. (Dkt. No. 76.) On April  
14 24, 2009, the Court denied Petitioner’s request for a certificate of appealability. (Dkt.  
15 No. 85.) The appeal remains pending.

## 16 II.

### 17 DISCUSSION

18 The Petition was filed after enactment of the Antiterrorism and Effective Death  
19 Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA in reviewing  
20 the petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059, 138 L. Ed. 2d 481  
21 (1997).

22 The AEDPA provides, in pertinent part, that: “Before a second or successive  
23 application permitted by this section is filed in the district court, the applicant shall move  
24 in the appropriate court of appeals for an order authorizing the district court to consider  
25 the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not have jurisdiction to  
26 consider a “second or successive” petition absent authorization from the Ninth Circuit.

---

27  
28 <sup>1</sup> *Pitchess v. Superior Court*, 11 Cal. 3d 53, 113 Cal. Rptr. 897 (1974).

1 *Burton v. Stewart*, 549 U.S. 147, 152, 127 S. Ct. 793, 166 L. Ed. 2d 628 (2007); *Cooper*  
2 *v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (“When the AEDPA is in play, the  
3 district court may not, in the absence of proper authorization from the court of appeals,  
4 consider a second or successive habeas application.”) (citation omitted and quotation  
5 marks omitted).

6 Here, the Petition is a second or successive petition that challenges the same  
7 conviction and sentence imposed by the same judgment of the state court as in  
8 *Bradford I.* (Petition at 2.) The Petition is considered a successive petition because the  
9 district court entered judgment and denied the petition on the merits in *Bradford I.*, and  
10 the appeal is pending in the Ninth Circuit. See *Beaty v. Schriro*, 554 F.3d 780, 783 &  
11 n.1 (9th Cir.), *cert. denied*, 130 S. Ct. 364, 175 L. Ed. 2d 50 (2009).

12 On the first page of the Petition, Petitioner refers to “total of 15 (separate) lodged  
13 items to (merit) appeal under 1915(e)-(1) to (appointment) of counsel to both (writs)  
14 enclosed a (total) of 63 paged lodgements dated 11/15/09 before the court.” (Petition at  
15 1.) Petitioner refers to the case number of *Bradford I.* (*Id.* at 1, 2.) As stated above,  
16 *Bradford I.* is currently on appeal. Filing a second petition is not an appropriate  
17 mechanism to appeal a district court’s denial of a previous petition for writ of habeas  
18 corpus.

19 It plainly appears from the face of the Petition that Petitioner has not received  
20 authorization from the Ninth Circuit Court of Appeals to file a second or successive  
21 petition. This Court must, therefore, dismiss the Petition as a successive petition for  
22 which it lacks jurisdiction under 28 U.S.C. § 2244(b)(3). See *Burton*, 549 U.S. at 152.

23 Rule 4 of the Rules Governing Section 2254 Cases in the United States Courts  
24 provides that “[i]f it plainly appears from the face of the petition and any attached  
25 exhibits that the petitioner is not entitled to relief in the district court, the judge must  
26 dismiss the petition and direct the clerk to notify the petitioner.” Here, summary  
27 dismissal is warranted.

28 ///


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

III.

ORDER

IT IS HEREBY ORDERED that Judgment be entered summarily dismissing the habeas petition and action for lack of subject matter jurisdiction.

Date: February 10, 2010

  
\_\_\_\_\_  
R. GARY KLAUSNER  
UNITED STATES DISTRICT JUDGE

Presented By:

\_\_\_\_\_  
ALICIA G. ROSENBERG  
UNITED STATES MAGISTRATE JUDGE