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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLIFTON BUTLER,
Petitioner,
v.
UNKNOWN,
Respondent.

NO. CV 11-4267-JFW (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF HABEAS
CORPUS

On May 18, 2011, Petitioner, 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. The Petition challenges his conviction in Los Angeles County Superior Court in 1996. (Petition at 2.)

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 in the Central District of California: *Clifton C. Butler v. A.A. Lamarque*, CV 00-7564-DT (CT) (“*Butler I*”).

On January 22, 1996, a Los Angeles County jury convicted Petitioner of second degree murder. (Petition at 2.) On May 13, 1996, the court sentenced

1 him to 15 years to life plus 5 years. (*Id.*) On July 11, 1997, the California Court
2 of Appeal affirmed the judgment. (*Id.* at 3.) On October 15, 1997, the California
3 Supreme Court denied the petition for review. (*Id.*) His habeas subsequent
4 habeas petitions from 1998 through May 2010 were all denied. See California
5 Appellate Courts online docket, Case Nos. S074378, B216465, B224051,
6 S177806.

7 In *Butler I*, on July 12, 2000, Petitioner filed a Petition for Writ of Habeas
8 Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. On
9 November 14, 2000, the District Court issued an Order Accepting Report and
10 Recommendation of United States Magistrate Judge and Judgment denying the
11 petition with prejudice based on expiration of the statute of limitations. *Butler I*,
12 Dkt. Nos. 15-16. On December 15, 2000, Petitioner filed a Notice of Appeal. *Id.*,
13 Dkt. No. 17. On August 20, 2001, the Ninth Circuit denied the certificate of
14 appealability. *Id.*, Dkt. No. 22.

15 The current Petition challenges the same conviction and sentence as
16 *Butler I*. (Petition at 2.)

17 II.

18 DISCUSSION

19 The Petition was filed after enactment of the Antiterrorism and Effective
20 Death Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA
21 in reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059,
22 138 L. Ed. 2d 481 (1997).

23 The AEDPA provides, in pertinent part: “Before a second or successive
24 application permitted by this section is filed in the district court, the applicant shall
25 move in the appropriate court of appeals for an order authorizing the district court
26 to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not
27 have jurisdiction to consider a “second or successive” petition absent
28 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152, 127 S.

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

5 Here, the Petition is a second or successive petition that challenges the
6 same conviction and sentence imposed by the same judgment of the state court
7 as in *Butler I*. (Petition at 2.) The petition in *Butler I* was denied with prejudice as
8 untimely. *Butler I*, Dkt. Nos. 12, 15-16. “[D]ismissal of a section 2254 habeas
9 petition for failure to comply with the statute of limitations renders subsequent
10 petitions second or successive for purposes of the AEDPA.” *McNabb v. Yates*,
11 576 F.3d 1028, 1030 (9th Cir. 2009).

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


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

22 **III.**

23 **ORDER**

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

26 DATED: June 13, 2011

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JOHN F. WALTER
United States District Judge