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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOSE WEATHERSPOON JR.,
Petitioner,
v.
WOFFORD,
Respondent.

NO. EDCV 13-910-GAF (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF
HABEAS CORPUS

I.

PROCEDURAL BACKGROUND

On July 21, 2006, a Riverside County jury convicted Petitioner of unlawful possession of a handgun and unlawful possession of ammunition. (Petition at 2). Petitioner was sentenced to 26 years to life pursuant to California’s Three Strikes law. (*Id.*)

On June 4, 2010, Petitioner filed a petition for writ of habeas corpus challenging his conviction in this court in *Weatherspoon v. Uribe*, Case No. EDCV 10-822-GAF-AGR (“*Weatherspoon I*”).¹ On January 15, 2013, judgment was

¹ Pursuant to Fed. R. Evid. 201, the court takes judicial notice of the records in the prior action.

1 entered denying the petition on the merits with prejudice. *Id.*, Dkt. No. 13.
2 Petitioner did not appeal.

3 On May 20, 2013, Petitioner filed the instant Petition for Writ of Habeas
4 Corpus by a Person in State Custody (“Petition”) pursuant to 28 U.S.C. § 2254 in
5 which he challenges the same conviction. (Petition at 1.)

6 **II.**

7 **DISCUSSION**

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

12 The AEDPA provides, in pertinent part: “Before a second or successive
13 application permitted by this section is filed in the district court, the applicant shall
14 move in the appropriate court of appeals for an order authorizing the district court
15 to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not
16 have jurisdiction to consider a “second or successive” petition absent
17 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152, 127 S.
18 Ct. 793, 166 L. Ed. 2d 628 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th
19 Cir. 2001) (“When the AEDPA is in play, the district court may not, in the absence
20 of proper authorization from the court of appeals, consider a second or
21 successive habeas application.”) (citation and quotation marks omitted).

22 Here, the Petition is a second or successive petition that challenges the
23 same conviction and sentence imposed by the same judgment of the state court
24 as in *Weatherspoon I*.

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


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

8 **III.**

9 **ORDER**

10 IT IS HEREBY ORDERED that judgment be entered summarily dismissing
11 the Petition and action for lack of subject matter jurisdiction.

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13 DATED: May 28, 2013

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16 GARY A. FEESS
17 United States District Judge
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