

NOV 22 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p>v.</p> <p>DENNIS CHAN LAI,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 09-16406

D.C. Nos. 3:07-cv-02155-SC
3:87-cr-00359-SC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Samuel Conti, District Judge, Presiding

Submitted November 16, 2010**

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

Federal prisoner Dennis Chan Lai appeals pro se from the district court's order denying his 28 U.S.C. § 2255 motion 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).

The record reflects that Lai had filed a section 2255 motion on November 11, 1995, which this court rejected on the merits. Lai subsequently filed another section 2255 motion on April 13, 2007. The district court properly dismissed that motion because Lai had not obtained an order from this Court authorizing it to consider the motion. *See* 28 U.S.C. § 2244(b)(3)(A); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per curiam).

To the extent Lai is applying for an order authorizing a second or successive petition, such request is denied. *See* 28 U.S.C. § 2244(b)(3)(C).

We construe Lai's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is also denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.