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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**
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10 Frederick King, Jr.,

11 Petitioner,

12 v.

13 Ryan Thornell, et al.,

14 Respondents.

No. CV-23-01962-PHX-KML

ORDER

15
16 In 2003, petitioner Frederick King, Jr., was convicted in state court of first-degree
17 felony murder, two counts of attempted second degree murder, and attempted robbery.
18 After King pursued a direct appeal and multiple rounds of post-conviction relief in state
19 court, in 2014 he filed a habeas corpus petition in federal court. That petition was denied
20 in 2015 as untimely and King did not seek a certificate of appealability. King filed a
21 second federal petition for habeas corpus in 2023. Magistrate Judge Michael T. Morrissey
22 issued a Report and Recommendation (“R&R”) finding King had filed a second or
23 successive habeas petition not authorized by the court of appeals.¹ (Doc. 16 at 8.) King
24 filed objections.

25 A district judge “may accept, reject, or modify, in whole or in part, the findings or

26
27 ¹ King sought permission from the Ninth Circuit to file a second or successive petition
28 raising the same arguments he made in his petition here. Motion for Leave to File a
“Second or Successive” Petition, *King v. Thornell*, No. 23-2294 (9th Cir. Sept. 18, 2023).
The Ninth Circuit denied King’s request. *King v. Thornell*, No. 23-2294 (9th Cir. Dec.
14, 2023).

1 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). The district court
2 must review de novo the portions to which an objection is made. *Id.* The district court
3 need not, however, review the portions to which no objection is made. *See Schmidt v.*
4 *Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (“[D]e novo review of factual and
5 legal issues is required if objections are made, but not otherwise.”) (quotation marks and
6 citation omitted).

7 King objects to the R&R, arguing his petition is not second or successive for two
8 main reasons.

9 First, according to King, “[a] dismissal for untimeliness presents a permanent and
10 incurable bar to a factual review of the *underlying* claims” but there is no authority “on
11 whether a second petition filed after the first petition, which does not seek to review
12 claims previously presented in a habeas petition, is considered ‘second’ or ‘successive.’”
13 (Doc. 17 at 3.) That is incorrect. “[D]ismissal of a habeas petition as untimely constitutes
14 a disposition on the merits and . . . a further petition challenging the same conviction
15 would be ‘second or successive.’” *McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009).

16 Second, King argues the Arizona Supreme Court’s 2022 denial of his sixth
17 petition for review constitutes an intervening judgment permitting him to file a petition
18 now. (Doc. 17 at 2–3.) But “[a] habeas petition is second or successive . . . if it raises
19 claims that were *or could have been* adjudicated on the merits.” *Id.* (emphasis added). Put
20 differently, “[a] later-filed petition is precluded as second or successive . . . if the claim it
21 raises was ripe and could have been brought in the prisoner’s prior petition challenging
22 the same judgment.” *Creech v. Richardson*, 94 F.4th 847, 849 (9th Cir. 2024). The claim
23 in the current later-filed petition, which is premised on a change in Arizona law that went
24 into effect in 2006, could have been brought in King’s first federal petition in 2014.
25 Therefore, the R&R is correct that the current petition is an unauthorized second or
26 successive petition.

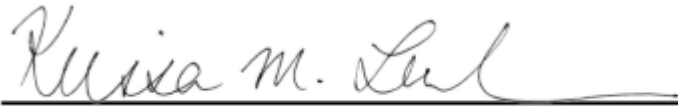
27 **IT IS ORDERED** the Report and Recommendation (Doc. 16) is **ADOPTED**. The
28 petition for a writ of habeas corpus (Doc. 1) is **DENIED**. The Clerk of Court shall enter a

1 judgment of dismissal without prejudice.

2 **IT IS FURTHER ORDERED** a Certificate of Appealability and leave to proceed
3 in forma pauperis on appeal are **DENIED** because the dismissal of the petition is justified
4 by a plain procedural bar and jurists of reason would not find the procedural ruling
5 debatable.

6 Dated this 2nd day of January, 2025.

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Honorable Krissa M. Lanham
United States District Judge