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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|------------------------|---|-------------------------------|
| DAVID LEE SCOTT, |) | Case No. CV 10-6906-GHK (OP) |
| |) | |
| Petitioner, |) | MEMORANDUM AND ORDER RE: |
| |) | SUMMARY DISMISSAL OF PETITION |
| v. |) | FOR WRIT OF HABEAS CORPUS (28 |
| |) | U.S.C. § 2254) AS SUCCESSIVE |
| |) | |
| RANDY GROUNDS, Warden, |) | |
| |) | |
| Respondent. |) | |

I.
PROCEEDINGS

On September 16, 2010, David Lee Scott (“Petitioner”), filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (“Petition”).

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court has examined the Petition and finds that it plainly appears from its face that Petitioner is not entitled to relief in the district court. Specifically, the Court finds that the Petition is subject to summary dismissal because it is “successive.” See 28 U.S.C. § 2244(b).

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1 II.

2 **PROCEDURAL HISTORY**

3 On April 29, 1994, Petitioner was convicted after a jury trial in the Los
4 Angeles County Superior Court, case number NA017034, of attempted murder
5 (Cal. Penal Code §§ 667/187), and second degree murder (Cal. Penal Code §
6 187(a)). (Pet. at 2.) On May 14, 1994, Petitioner was sentenced to a state prison
7 term of life plus eight years for the attempted murder charge and fifteen years to
8 life for the murder charge. (Id.)

9 Petitioner appealed his conviction to the California Court of Appeal, case
10 number B085121. On February 9, 1995, the court of appeal affirmed the judgment
11 in full. (Official Records of California Courts.¹)

12 Petitioner filed a petition for review in the California Supreme Court, case
13 number S045465. On April 19, 1995, the supreme court denied the petition. (Id.)

14 Since 1995, Petitioner has filed several habeas corpus petitions in the
15 California Court of Appeal and in the California Supreme Court. All of his habeas
16 petitions have been denied. (Id.)

17 Petitioner has also filed eight previous § 2254 federal habeas petitions in
18 this District challenging the aforementioned conviction. (CM/ECF CV 08-880-
19 GHK (CT), Dkt. No. 3 at 1.) His first § 2254 petition was considered on the
20 merits and dismissed with prejudice. (Id. at 2.) His subsequent § 2254 petitions
21 were denied as successive. (Id. at 3.) Most recently, on August 26, 2010,
22 Judgment was entered denying Petitioner's eighth § 2254 petition in this District
23 as successive. (CM/ECF CV 10-5744-GHK (OP), Dkt. No. 3.) The Court takes
24

25 ¹ The Court takes judicial notice of the state appellate court records for
26 Petitioner's cases, which are available on the Internet at <http://appellatecases.courtinfo.ca.gov>. See Smith v. Duncan, 297 F.3d 809, 815 (9th Cir. 2002) (federal
27 courts may take judicial notice of relevant state court records in federal habeas
28 proceedings).

1 judicial notice of its own records.

2 For the reasons discussed below, the Court finds that the current Petition is
3 subject to summary dismissal as “successive.”

4 **III.**

5 **DISCUSSION**

6 This Court may entertain a habeas application on behalf of a person who is
7 in custody pursuant to a state court judgment and in violation of the Constitution,
8 laws, or treaties of the United States. See 28 U.S.C. § 2254(a). The Court need
9 neither grant the writ nor order a return if it appears from the application that the
10 applicant is not entitled to relief. See 28 U.S.C. § 2243. “If it plainly appears
11 from the face of the petition and any exhibits annexed to it that the petitioner is not
12 entitled to relief in the district court, the judge must dismiss the petition and direct
13 the clerk to notify the petitioner.” Rule 4 of the Rules Governing Section 2254
14 Cases in United States District Courts, 28 U.S.C. foll. § 2254; see also Hendricks
15 v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (summary dismissal is appropriate
16 where the allegations in the petition are vague or conclusory, palpably incredible,
17 or patently frivolous or false).

18 Title 28 U.S.C. § 2244 is entitled “Finality of determination” and provides
19 in pertinent part that:

20 (b)(1) A claim presented in a second or successive habeas corpus
21 application under section 2254 that was presented in a prior
22 application shall be dismissed.

23 (2) A claim presented in a second or successive habeas corpus
24 application under section 2254 that was not presented in a prior
25 application shall be dismissed unless--

26 (A) the applicant shows that the claim relies on a new
27 rule of constitutional law, made retroactive to cases on
28 collateral review by the Supreme Court, that was

1 previously unavailable; or

2 (B)(i) the factual predicate for the claim could not have
3 been discovered previously through the exercise of due
4 diligence; and

5 (ii) the facts underlying the claim, if proven and viewed
6 in light of the evidence as a whole, would be sufficient to
7 establish by clear and convincing evidence that, but for
8 constitutional error, no reasonable factfinder would have
9 found the applicant guilty of the underlying offense.

10 (3)(A) Before a second or successive application permitted by this
11 section is filed in the district court, the applicant shall move in the
12 appropriate court of appeals for an order authorizing the district court
13 to consider the application.

14 28 U.S.C. § 2244(b).

15 As set forth above, Petitioner has filed now filed eight previous § 2254
16 petitions in this District challenging his 1994 conviction. (CM/ECF CV 08-880-
17 GHK (CT), Dkt. No. 3 at 1; CV 10-5744-GHK (OP), Dkt. No. 3.) His first § 2254
18 petition was considered on the merits and dismissed with prejudice. (Id. at 2.)
19 Each of his subsequent § 2254 petitions were dismissed as successive. (Id. at 3.)
20 Petitioner has failed to obtain an order from the Ninth Circuit Court of Appeals
21 authorizing this Court to consider the current Petition. 28 U.S.C. § 2244(b)(3)(A).
22 Thus, the Court finds that the current Petition is subject to summary dismissal as
23 “successive.”

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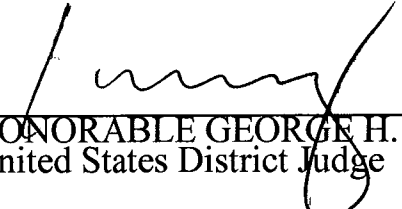
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1 IV.
2 ORDER

3 IT IS THEREFORE ORDERED that the Petition is hereby dismissed as
4 successive, and Judgment shall be entered accordingly.

5 The Deputy Clerk of the Court is directed to send Petitioner a copy of this
6 Order.

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8 DATED: 10/26, 2010


9 HONORABLE GEORGE H. KING
United States District Judge

10
11 Presented by:

12 
13 HONORABLE OSWALD PARADA
14 United States Magistrate Judge