



1 On January 7, 2005, petitioner, proceeding with counsel, filed a petition for writ of habeas  
2 corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in Case No. KA023108 (Gaisie  
3 II).<sup>2</sup> On January 31, 2005, the Court entered Judgment concluding Gaisie II was a second or  
4 successive petition, and dismissing it without prejudice for lack of subject matter jurisdiction.

#### 5 DISCUSSION

6 The present Petition is governed by the provisions of the Antiterrorism and Effective Death  
7 Penalty Act of 1996 ("AEDPA"). AEDPA amended 28 U.S.C. § 2244(b) to read, in pertinent part,  
8 as follows:

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

12 (2) A claim presented in a second or successive habeas corpus application  
13 under section 2254 that was not presented in a prior application shall be dismissed  
14 unless –

15 (A) the applicant shows that the claim relies on a new rule of  
16 constitutional law, made retroactive to cases on collateral review by  
17 the Supreme Court, that was previously unavailable; or

18 (B)(i) the factual predicate for the claim could not have been  
19 discovered previously through the exercise of due diligence; and [¶]  
20 (ii) the facts underlying the claim, if proven and viewed in light of the  
21 evidence as a whole, would be sufficient to establish by clear and  
22 convincing evidence that, but for constitutional error, no reasonable  
23 factfinder would have found the applicant guilty of the underlying  
24 offense.

---

25  
26  
27  
28 <sup>2</sup> Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of its own files and records  
in Gaisie II.

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

4 28 U.S.C. § 2244(b)(1)-(3)(A); see also Rule 9 of the Rules Governing § 2254 Cases in the United  
5 States District Courts (“Before presenting a second or successive petition, the petitioner must  
6 obtain an order from the appropriate court of appeals authorizing the district court to consider the  
7 petition. . . .”). In addition, Rule 4 of the Rules Governing § 2254 Cases in the United States  
8 District Courts provides that if it plainly appears from the face of the petition and any exhibits  
9 annexed to it that the petitioner is not entitled to relief in the district court, the judge shall  
10 summarily dismiss the petition.

11 The instant Petition is a second or successive petition challenging petitioner’s conviction  
12 and sentence in Los Angeles County Superior Court Case No. KA023108. See McNabb v. Yates,  
13 576 F.3d 1028, 1029 (9th Cir. 2009) (per curiam) (“A habeas petition is second or successive .  
14 . . if it raises claims that were or could have been adjudicated on the merits.”). “If an application  
15 is ‘second or successive,’ the petitioner must obtain leave from the Court of Appeals before filing  
16 it with the district court.” Magwood v. Patterson, 130 S.Ct. 2788, 2796 (2010). There is no  
17 indication in the record that petitioner has obtained permission from the Ninth Circuit Court of  
18 Appeals to file a second or successive petition. “When the AEDPA is in play, the district court  
19 may not, in the absence of proper authorization from the court of appeals, consider a second or  
20 successive habeas application.” Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (per  
21 curiam), cert. denied, 538 U.S. 984 (2003) (internal quotation marks and citation omitted); accord  
22 Burton v. Stewart, 549 U.S. 147, 152-53, 127 S.Ct. 793, 796 (2007) (per curiam). Because the  
23 Petition is a “second or successive” petition, the Court lacks jurisdiction to consider the merits of  
24 the Petition. See Magwood, 130 S.Ct. at 2796 (“[I]f [petitioner’s] application [is] ‘second or  
25 successive,’ the District Court [must] dismiss[] it in its entirety because [petitioner] failed to obtain  
26 the requisite authorization from the Court of Appeals.”); accord Burton, 549 U.S. at 152-53, 127  
27  
28

1 S.Ct. at 796. Accordingly, the Court will dismiss the Petition without prejudice to petitioner filing  
2 a new action if and when he obtains permission to file a successive petition.<sup>3</sup>

3 Based on the foregoing, IT IS ORDERED THAT the Petition is summarily dismissed without  
4 prejudice for lack of jurisdiction.

5  
6 DATED: May 29, 2012.

7  
8 

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

DEAN D. PREGERSON  
UNITED STATES DISTRICT JUDGE

3 If petitioner obtains permission to file a second petition, he should file a new petition for writ of habeas corpus. He should not file an amended petition in this action or use the case number from this action because the instant action is being closed today. When petitioner files a new petition, the Court will give the petition a new case number.