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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 GREGORIO ROBERTO ORTIZ, JR., ) No. CV 11-08515-JVS (VBK)  
12 )  
13 ) Petitioner, ) ORDER SUMMARILY DISMISSING PETITION  
14 )  
15 ) v. ) FOR WRIT OF HABEAS CORPUS FOR LACK  
16 ) OF SUBJECT MATTER JURISDICTION  
17 )  
18 ) DOMINGO URIBE, JR., )  
19 )  
20 ) Respondent. )  
21 )  
22 )

23 On October 14, 2011, Gregorio Roberto Ortiz, Jr. (hereinafter  
24 referred to as "Petitioner") filed a "Petition for Writ of Habeas  
25 Corpus by a Person in State Custody," pursuant to 28 U.S.C. §2254.  
26 Petitioner was convicted in Los Angeles County Superior Court Case No.  
27 KA052823 and sentenced to ninety-one years in prison.<sup>1</sup> (See Petition  
28 )

23 <sup>1</sup> Petitioner failed to fill in all of the questions listed in  
24 the form Petition such as the nature of the offenses involved, Penal  
25 Code or other code sections, date of conviction and sentence, and  
26 whether he appealed to the California Court of Appeal or California  
27 Supreme Court. However, the Court takes judicial notice of its own  
28 files and records, (See Mir v Little Co. of Mary Hosp., 844 F.2d 646,  
649 (9<sup>th</sup> Cir. 1988)), and notes that on May 18, 2006, Petitioner filed  
a "Petition for Writ of Habeas Corpus by a Person in State Custody" in  
the United States District Court for the Central District of  
California, which was given Case No. CV 06-03072-AHM (VBK).

(continued...)

1 at 2.) Petitioner contends "nondisclosure of witness - names." (See  
2 Petition at 5, attached pages.)

3 It appears from the face of the Petition that it is directed to  
4 the same 2001 Los Angeles County Superior Court conviction as prior  
5 habeas petitions filed by Petitioner in this Court on May 18, 2006 in  
6 Case No. CV 06-03072-AHM (VBK) and on July 6, 2010 in Case No. CV 10-  
7 04965-AHM (VBK).<sup>2</sup>

8  
9 <sup>1</sup>(...continued)

10 Petitioner was convicted by a jury in December of 2001 in Los Angeles  
11 County Superior Court Case No. KA052823 of second degree robbery in  
12 violation of California Penal Code ("PC") §211, carjacking in  
13 violation of PC §215(a) and grand theft auto in violation of PC  
14 §487(d) with a true finding that he personally used a deadly weapon in  
15 violation of PC §12022.5(b)(1) and (2) and suffered two prior  
16 convictions in violation of PC §667(a)(1). Petitioner was sentenced  
17 to state prison for a term of 91 years.

18 <sup>2</sup> On May 18, 2006, Petitioner filed a "Petition for Writ of  
19 Habeas Corpus by a Person in State Custody" in the United States  
20 District Court for the Central District of California, which was  
21 given Case No. CV 06-03072-AHM (VBK). In this Petition, Petitioner  
22 raised the following claims: (1) "Miscarriage of justice due to  
23 constitutionally mandated discovery concealed; (2) Illegally  
24 imprisoned in violation of the United States Constitution and if not  
25 heard the Constitution would be triumphed [sic]; and (3) Trial court  
26 abused its power for continuance." (See Petition at 5 and attached  
27 pages.)

28 On July 6, 2010, Petitioner filed a "Petition for Writ of Habeas  
Corpus by a Person in State custody" pursuant to 28 U.S.C. § 2254,  
which was given Case No. CV 10-04965-AHM (VBK). Petitioner raised the  
following claims: "(1) actual innocence; and (2) nondisclosure of  
witness names." (See Petition at 5; attached memorandum.)

The Court also notes Petitioner filed two other federal habeas  
petitions regarding Los Angeles Superior Court Case No. KA051285. On  
January 4, 2005, Petitioner filed a "Petition for Writ of Habeas  
Corpus by a Person in State Custody" in the United States District  
Court for the Central District of California, which was given Case  
No. CV 05-00052-PSG (FMO). In this Petition, Petitioner raised the  
following claims: (1) The prosecution offered perjured testimony; (2)  
the prosecution suppressed exculpatory evidence; (3) the Confrontation  
Clause was violated by the admission of the out-of-court statement of  
an unavailable witness; (4) The trial court improperly admitted  
irrelevant and prejudicial evidence of the 911 call reporting the  
(continued...)

1 On June 11, 2008, Judgment was entered in Case No. CV 06-03072-  
2 AHM (VBK), denying the petition and dismissing the action with  
3 prejudice, pursuant to the District Judge's Order approving and  
4 adopting the Magistrate Judge's Report and Recommendation.

5 On July 9, 2010, Judgment was entered in Case No. CV 10-04965-AHM  
6 (VBK), dismissing the Petition for lack of subject matter  
7 jurisdiction.

8 The Petition now pending is governed by the provisions of the  
9 Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-  
10 132, 110 Stat. 1214)("the Act"), which became effective April 24,  
11 1996. Section 106 of the Act amended 28 U.S.C. §2244(b) to read, in  
12 pertinent part, as follows:

13 "(1) A claim presented in a second or successive habeas  
14 corpus application under section 2254 that was presented in a  
15

16 <sup>2</sup>(...continued)  
17 assault incident, in violation of Petitioner's rights to due process  
18 and a fair trial; (5) A statement Petitioner made to the arresting  
19 police officer should not have been admitted at trial because, prior  
20 to making it, Petitioner was not advised of his rights under Miranda  
21 v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966); (6) The prosecution  
22 committed misconduct by making certain misrepresentations during  
23 closing argument; (7) The government committed "outrageous"  
24 misconduct; (8) Certain of the trial court's rulings, discussion of  
the evidence and trial procedure, and the alleged actions or  
commissions reflected judicial bias against Petitioner; (9)  
Petitioner's sentence constitutes cruel and unusual punishment; and  
(10) Petitioner's sentence is impermissible because it reflects  
punishment only for Petitioner's prior criminal record, not his  
current offenses. (See Petition at 2-27.) On March 19, 2008, Judgment  
was entered denying and dismissing the Petition.

On June 17, 2010, Petitioner filed a "Petition for Writ of Habeas  
Corpus by a Person in State Custody" in the United States District  
Court for the Central District of California, which was given Case No.  
CV 10-04470-AHM (VBK). In this Petition, Petitioner raised the  
following claims: "(1) actual innocence; and (2) false evidence/  
insufficient evidence." (See Petition at 5; attached memorandum.) On  
June 30, 2010, the Court issued an Order Summarily Dismissing Petition  
for Writ of Habeas Corpus for Lack of Subject Matter Jurisdiction.

1 prior application shall be dismissed unless--

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

6 (B)(i) the factual predicate for the claim could  
7 not have been discovered previously through the exercise of  
8 due diligence; and

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

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

19 (Emphasis added.)  
20

21 The Petition now pending constitutes a second and/or successive  
22 petition challenging the same conviction as Petitioner's prior habeas  
23 petitions, within the meaning of 28 U.S.C. §2244(b). Thus, it was  
24 incumbent on Petitioner under §2244(b)(3)(A) to secure an order from  
25 the Ninth Circuit authorizing the District Court to consider the  
26 Petition, prior to his filing of it in this Court. Petitioner's  
27 failure to do so deprives the Court of subject matter jurisdiction.

28 For the foregoing reasons, **IT IS ORDERED** that this action be

1 summarily dismissed pursuant to Rule 4 of the Rules Governing Section  
2 2254 Cases in the United States District Courts. Further, the Court  
3 declines to issue a Certificate of Appealability ("COA").<sup>3</sup>

4 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

5  
6 DATED: October 24, 2011

  
JAMES V. SELNA  
UNITED STATES DISTRICT JUDGE

8 Presented on  
9 October 19, 2011 by:

10  
11 /s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE

12  
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14  
15 <sup>3</sup> Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability  
16 may issue "only if the applicant has made a substantial showing of the  
17 denial of a constitutional right." Here, the Court has concluded that  
18 the Petition is a second and/or successive petition. Thus, the  
19 Court's determination of whether a Certificate of Appealability should  
20 issue here is governed by the Supreme Court's decision in Slack v.  
21 McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000), where the Supreme  
22 Court held that, "[w]hen the district court denies a habeas petition  
23 on procedural grounds without reaching the prisoner's underlying  
constitutional claim, a COA should issue when the prisoner shows, at  
least, that jurists of reason would find it debatable whether the  
petition states a valid claim of the denial of a constitutional right  
and that jurists of reason would find it debatable whether the  
district court was correct in its procedural ruling." 529 U.S. at  
484. As the Supreme Court further explained:

24 "Section 2253 mandates that both showings be made before the  
25 court of appeals may entertain the appeal. Each component  
26 of the § 2253(c) showing is part of a threshold inquiry, and  
27 a court may find that it can dispose of the application in  
a fair and prompt manner if it proceeds first to resolve the  
issue whose answer is more apparent from the record and  
arguments." Id. at 485.

28 Here, the Court finds that Petitioner has failed to make the  
requisite showing that "jurists of reason would find it debatable  
whether the district court was correct in its procedural ruling."