

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                                   |   |                               |
|-----------------------------------|---|-------------------------------|
| RONALD LEE ADAMS,                 | ) | CASE NO. CV 13-2704-R         |
|                                   | ) |                               |
| Plaintiff/Petitioner,             | ) | ORDER DISMISSING PETITIONER’S |
|                                   | ) | WRIT OF HABEAS CORPUS BY A    |
| vs.                               | ) | PERSON IN STATE CUSTODY       |
|                                   | ) |                               |
| UNITED STATES DISTRICT COURT      | ) |                               |
| FOR CENTRAL DISTRICT OF           | ) |                               |
| CALIFORNIA; STEPHEN G. LARSON,    | ) |                               |
| MAGISTRATE JUDGE UNITED STATES    | ) |                               |
| DISTRICT COURT, in individual and | ) |                               |
| official capacity; THE STATE OF   | ) |                               |
| CALIFORNIA,                       | ) |                               |
|                                   | ) |                               |
| Defendants/Respondents.           | ) |                               |
|                                   | ) |                               |

Petitioner is a state prisoner who is proceeding *pro se* with a petition for writ of *habeas corpus* pursuant to Title 28 U.S.C. § 2254. As discussed below, the Court finds that the petition must be dismissed as a successive petition over which the Court lacks jurisdiction. The Court also denies a certificate of appealability as Defendant has not made a substantial showing of the denial of a constitutional right, as is required to support the issuance of a certificate of appealability.

**I. The Court Lacks Subject Matter Jurisdiction Because the Petition Is Successive**

The Court has a duty to screen habeas corpus petitions. *See* Rules Governing § 2254 Cases in the United States District Courts, Rule 4 Advisory Committee Notes. Because the petition in

1 the present case was filed after the enactment of the Antiterrorism and Effective Death Penalty Act  
2 of 1996 (AEDPA), the AEDPA applies to the petition. *Lindh v. Murphy*, 521 U.S. 320, 327, 117  
3 S. Ct. 2059, 138 L. Ed. 2d 481 (1997), cert. denied, 522 U.S. 1069, 118 S. Ct. 739, 139 L. Ed. 2d  
4 676 (1998); *Furman v. Wood*, 190 F.3d 1002, 1004 (9th Cir. 1999). The AEDPA "greatly restricts  
5 the power of federal courts to award relief to state prisoners who file second or successive habeas  
6 corpus applications." *Tyler v. Cain*, 533 U.S. 656, 661-662, 121 S. Ct. 2478, 150 L. Ed. 2d 632  
7 (2001). Title 28 U.S.C. § 2244(b) provides, in part:

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

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

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

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

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

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

28 Title 28 U.S.C. § 2244(b) (emphasis added.)

The core principle underlying § 2244(b) is that, absent extraordinary circumstances, a federal  
*habeas* petitioner will have only one opportunity to litigate a federal *habeas* petition. At a  
minimum, a subsequent federal petition filed by a prisoner who has already received one  
adjudication of a habeas petition constitutes a "second or successive application" within the  
meaning of § 2244(b). A request for authorization to file such a repetitive petition under

1 § 2244(b)(3) must be denied unless the petitioner's claims fall within one of the two narrow  
2 exceptions set forth in § 2244(b)(2). In the absence of proper authorization from the Court of  
3 Appeals, a district court lacks jurisdiction to consider a *habeas corpus* petition that is a second or  
4 successive one within the meaning of § 2244(b). *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th  
5 Cir. 2001); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). This Court may transfer a  
6 second or successive petition erroneously filed with the district court to the Ninth Circuit for its  
7 "gatekeeper" review under § 2244(b)(3).

8 28 U.S.C. § 2244(b)(3)(A) creates a "gatekeeping" mechanism for the consideration of  
9 second or successive petitions. *Felker v. Turpin*, 518 U.S. 651, 657, 116 S. Ct. 2333, 135 L. Ed.  
10 2d 827 (1996). "The prospective applicant must file in the court of appeals a motion for leave to  
11 file a second or successive *habeas* application in the district court." *Id.* The applicant must make  
12 a *prima facie* showing that the application satisfies the requirements of § 2244(b). *Id.*

13 Here, Petitioner challenges his conviction in a California state court of carjacking and the  
14 unlawful taking of a vehicle. See Petitioner's Writ of *Habeas Corpus* ("Petitioners Writ"), CV 13-  
15 2704-R, ECF No. 1, p. 2. Petitioner has filed numerous petitions in the past. Most importantly,  
16 Petitioner challenged the same conviction in a 2004 writ of *habeas corpus* pursuant to 28 U.S.C. §  
17 2254. See *Adams v. Vazquez*, CV 04-2461-SGL. The 2004 petition was dismissed with prejudice  
18 by United States District Judge Stephen G. Larsen. *Id.*, ECF No. 65. Although the grounds for  
19 the current petition are framed as objections to Judge Larsen's dismissal, Petitioner is still  
20 challenging the same custody under the same judgment. The Supreme Court has held that a  
21 "second or successive" petition, subject to the "gatekeeping" provisions of the statute, is one that  
22 challenges the same custody under the same judgment challenged in the first petition. See *Burton*  
23 *v. Stewart*, 549 U.S. 147, 152, 127 S. Ct. 793, 166 L. Ed. 2d 628 (2007). Therefore, the Court  
24 must dismiss this matter for lack of subject matter jurisdiction. See *id.* (characterizing the  
25 successive petition limitation as jurisdictional).

## 26 **II. The Court Denies a Certificate of Appealability**

27 Pursuant to Rule 11 of the Rules Governing § 2254 cases, the Court "must issue or deny a  
28 certificate of appealability when it enters a final order adverse to the applicant." To obtain a

1 certificate of appealability, a petitioner must make a "substantial showing of the denial of a  
2 constitutional right." Title 28 U.S.C. § 2253(c)(2). The certificate of appealability shall indicate  
3 which specific issues satisfy that "relatively low" standard. *See id.* § 2253(c)(3); *Jennings v.*  
4 *Woodford*, 290 F.3d 1006, 1010 (9th Cir. 2002). The standard is satisfied when the "petitioner can  
5 'demonstrate that the issues are debatable among jurists of reason; that a court could resolve the  
6 issues [differently]; or that the questions are adequate to deserve encouragement to proceed  
7 further.'" *Jennings*, 290 F.3d at 1010 (internal citations omitted); *see also Slack v. McDaniel*, 529  
8 U.S. 473, 483, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

9       The Court has reviewed Petitioner's contentions and is fully apprised of the relevant facts  
10 and law. Petitioner essentially contends that Judge Larsen's dismissal was improper for two  
11 reasons. First, Judge Larsen issued a Report and Recommendation as a Magistrate Judge, and  
12 then adopted the Report and Recommendation after being appointed as an Article III District  
13 Court Judge. Petitioner contends "[t]his was a Constitutional violation of [his] Due Process Right  
14 to have an Impartial Hearing Officer. . . ." Petitioner's Writ, p. 16. Petitioner also asserts the  
15 baseless accusation that "Judge Larsen was dumping court cases because he felt underpaid." *Id.* at  
16 17. However, the Court does not find any hint of impropriety surrounding Judge Larsen's  
17 decision, and especially does not find that Petitioner has made a substantial showing of the denial  
18 of a constitutional right. Further, Petitioner's baseless and improper personal attacks on Judge  
19 Larsen should not be encouraged.

20       The crux of Petitioner's second claim for relief is that Judge Larsen fraudulently  
21 misconstrued the evidence in finding "sufficient evidence to support [Petitioner's] carjacking  
22 conviction . . . ." *Id.* at 18-49. Although Petitioner's 31-page, handwritten brief on this issue is  
23 difficult to follow – legibly and logically – it appears he is reasserting arguments that he raised in  
24 his 2004 petition and merely disagreeing with Judge Larsen's resolution of those issues. *See id.* at  
25 18-49 (reasserting claims for failure to instruct on lesser included offense, insufficient evidence to  
26 support carjacking conviction, failure to disclose exculpatory evidence, and failure to exclude  
27 "fruit of the poisonous tree" evidence); *compare* Order Dismissing Petition, CV 04-2461-SGL,  
28 ECF No. 65 (listing grounds for relief). The Court finds, however, that Petitioner's baseless

1 allegations and rehashing of arguments do not establish that these issues are debatable among  
2 jurists of reason; that a court could resolve the issues differently; or that the questions are adequate  
3 to deserve encouragement to proceed further. Thus, Petitioner has not made a substantial showing  
4 of the denial of a constitutional right, and a certificate of appealability must be denied.

5 IT IS HEREBY ORDERED that Defendant's Title 28 U.S.C. § 2254 Petition for Writ of  
6 *Habeas Corpus* by a Person in State Custody is DISMISSED without prejudice, BUT ONLY IF  
7 he obtains the necessary authorization from the Ninth Circuit. If Petitioner does not obtain such  
8 authorization, he shall not file any additional motions or petitions for amendment, reconsideration,  
9 rehearing, or other relief relating to his conviction in California state court of carjacking and the  
10 unlawful taking of a vehicle.

11 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

12 Dated: June 10, 2013.



---

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE