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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBBIE RIVA,
Petitioner,
v.
J. G. JANDA (Warden),
Respondent.

NO. CV 13-3813-VAP (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF
HABEAS CORPUS

I.

PROCEDURAL BACKGROUND

On January 16, 2002, a Los Angeles County jury convicted Petitioner of attempted voluntary manslaughter, assault with a deadly weapon, and discharging a firearm at an occupied vehicle. *People v. Riva*, 112 Cal. App. 4th 981, 986 (2003); (Petition at 2). On February 27, 2002, Petitioner was sentenced to 30 years to life. (*Id.*)

On April 15, 2005, Petitioner filed a petition for writ of habeas corpus challenging his conviction in this court in *Riva v. Woodford*, Case No. CV 05-

1 2795-VAP-JTL (“*Riva I*”).¹ On December 1, 2005, judgment was entered denying
2 the petition on the merits with prejudice. *Id.*, Dkt. No. 14. On March 25, 2009,
3 the Ninth Circuit issued its mandate affirming the judgment of the district court.
4 (Dkt. No. 24.)

5 On May 29, 2013, Petitioner filed the instant Petition for Writ of Habeas
6 Corpus by a Person in State Custody (“Petition”) pursuant to 28 U.S.C. § 2254 in
7 which he challenges the same conviction. (Petition at 2.)

8 II.

9 DISCUSSION

10 The Petition was filed after enactment of the Antiterrorism and Effective
11 Death Penalty Act of 1996 (“AEDPA”). Therefore, the court applies the AEDPA in
12 reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059, 138
13 L. Ed. 2d 481 (1997).

14 The AEDPA provides, in pertinent part: “Before a second or successive
15 application permitted by this section is filed in the district court, the applicant shall
16 move in the appropriate court of appeals for an order authorizing the district court
17 to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not
18 have jurisdiction to consider a “second or successive” petition absent
19 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152, 127 S.
20 Ct. 793, 166 L. Ed. 2d 628 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th
21 Cir. 2001) (“When the AEDPA is in play, the district court may not, in the absence
22 of proper authorization from the court of appeals, consider a second or
23 successive habeas application.”) (citation and quotation marks omitted).

24 Here, the Petition is a second or successive petition that challenges the
25 same conviction and sentence imposed by the same judgment of the state court
26 as in *Riva I*.

27 ¹ Pursuant to Fed. R. Evid. 201, the court takes judicial notice of the
28 records in the prior action.

1 It plainly appears from the face of the Petition that Petitioner has not
2 received authorization from the Ninth Circuit to file a second or successive
3 petition. This court must, therefore, dismiss the Petition as a successive petition
4 for which it lacks jurisdiction under 28 U.S.C. § 2244(b)(3). See *Burton*, 549 U.S.
5 at 152.

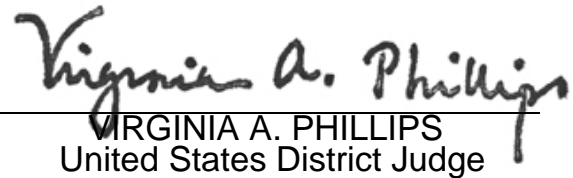
6 Rule 4 of the Rules Governing Section 2254 Cases in the United States
7 Courts provides that “[i]f it plainly appears from the face of the petition and any
8 attached exhibits that the petitioner is not entitled to relief in the district court, the
9 judge must dismiss the petition and direct the clerk to notify the petitioner.” Here,
10 summary dismissal is warranted.

11 **III.**

12 **ORDER**

13 IT IS HEREBY ORDERED that judgment be entered summarily dismissing
14 the Petition and action for lack of subject matter jurisdiction.

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16 DATED: June 19,
17 2013 _____

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VIRGINIA A. PHILLIPS
United States District Judge