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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CALVIN S. SECREST,	)	CASE NO. CV 14-3948-RGK (PJW)
	)	
Petitioner,	)	
	)	[ <del>PROPOSED</del> ] ORDER DISMISSING
v.	)	SECOND OR SUCCESSIVE HABEAS CORPUS
	)	PETITION AND DENYING CERTIFICATE
SHERMAN,	)	OF APPEALABILITY
	)	
Respondent.	)	
_____	)	

16           Before the Court is a Petition for Writ of Habeas Corpus in which  
17   Petitioner seeks to challenge a February 2002 sentence, following his  
18   conviction in Los Angeles County Superior Court for first degree  
19   robbery, possession of a gun, and evasion of police. (Petition at 2.)  
20   This is the third time that Petitioner has attempted to challenge his  
21   sentence in this court. In 2009, he filed a habeas petition, which  
22   was dismissed because it was untimely. See *Secrest v. Kramer*, CV 09-  
23   2291-RGK (JWJ), July 8, 2009 Order Accepting Report and Recommendation  
24   of United States Magistrate Judge. Petitioner then attempted to  
25   appeal the Court's ruling, but his application for a certificate of  
26   appealability was denied. See *Secrest v. Kramer*, No. 09-56300,  
27   February 28, 2011 Order. In June 2012, Petitioner filed a second  
28   habeas petition challenging the 2002 sentence, which the Court

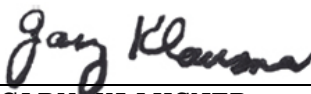
1 dismissed as second or successive. See *Secrest v. Brazelton*, CV 12-  
2 4901-RGK (PJW), June 18, 2012 Order. He now seeks to challenge that  
3 sentence for a third time.

4 A petition that is dismissed for untimeliness "presents a  
5 'permanent and incurable' bar to federal review of the underlying  
6 claims" and renders a subsequent petition second or successive.  
7 *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Absent an order  
8 from the Ninth Circuit, Petitioner may not bring a habeas petition  
9 challenging that sentence in this court. See 28 U.S.C. § 2244; see  
10 also *Burton v. Stewart*, 549 U.S. 147, 157 (2007) (holding district  
11 court lacks jurisdiction to consider the merits of a second or  
12 successive petition absent prior authorization from the circuit  
13 court). For this reason, the Petition is dismissed.


14 Further, because Petitioner has not made a substantial showing of  
15 the denial of a constitutional right or that the court erred in its  
16 ruling, Petitioner is not entitled to a certificate of appealability.  
17 See 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); *Miller-El v.*  
18 *Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473,  
19 484 (2000).

20 IT IS SO ORDERED.

21 DATED: May 29, 2014

22   
23 \_\_\_\_\_  
R. GARY KLAUSNER  
UNITED STATES DISTRICT JUDGE

24 Presented by:

25   
26 \_\_\_\_\_  
PATRICK J. WALSH  
27 UNITED STATES MAGISTRATE JUDGE

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