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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MELVIN THOMAS,)
)
) Petitioner,) Case No. CV 14-5144-ABC(AJW)
)
) v.)
)
) M. SPEARMAN, WARDEN,) MEMORANDUM AND ORDER
) DISMISSING PETITION
) Respondent.)
)

In 1996, petitioner was convicted of possession of cocaine, and pursuant to the Three Strikes Law, he was sentenced to state prison for a term of 25 years to life. [Petition at 2, 5]. In 2003, petitioner filed a habeas corpus petition in this Court challenging that 1996 conviction. See Case No. CV 03-517-RSWL(AJW). That petition was dismissed with prejudice on July 28, 2003, because it was not filed within the AEDPA's one year limitation period. Petitioner did not appeal that judgment. On February 5, 2010, petitioner filed a second habeas corpus petition, again attempting to challenge his 1996 conviction. Case No. CV 10-00857-RSWL(AJW). On February 26, 2010, judgment was entered dismissing that petition as successive. Petitioner filed the current petition for a writ of habeas corpus on June 27, 2014. Like the prior petitions, the current petition seeks

1 to challenge the validity of petitioner's 1996 conviction and
2 sentence.

3 A federal court must dismiss a second or successive petition that
4 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1).
5 A federal court must also dismiss a second or successive petition
6 raising a new ground unless the petitioner can show that (1) the claim
7 rests on a new, retroactive, constitutional right or (2) the factual
8 basis of the claim was not previously discoverable through due
9 diligence, and those new facts establish by clear and convincing
10 evidence that but for the constitutional error, no reasonable
11 factfinder would have found the applicant guilty of the underlying
12 offense. 28 U.S.C. § 2244(b)(2)(A)-(B).

13 It is not the district court, however, that decides whether a
14 successive petition may proceed. Rather, "[b]efore a second or
15 successive application permitted by this section is filed in the
16 district court, the applicant shall move in the appropriate court of
17 appeals for an order authorizing the district court to consider the
18 application." 28 U.S.C. § 2244(b)(3)(A). Absent authorization from
19 the Court of Appeals, this Court lacks jurisdiction over this
20 successive petition. Burton v. Stewart, 549 U.S. 147, 152-153, 157
21 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001), cert.
22 denied, 538 U.S. 984 (2003).

23 Petitioner's prior federal petition was dismissed with prejudice
24 as untimely. A dismissal with prejudice based on the statute of
25 limitation renders subsequent petitions successive under the AEDPA.
26 McNabb v. Yates, 576 F.3d 1028, 1029-1030 (9th Cir. 2009) (per
27 curiam). Because petitioner has not obtained leave from the Court of
28 Appeals to file a successive petition, this Court lacks jurisdiction

1 to consider it. Accordingly, the petition for a writ of habeas corpus
2 is dismissed for lack of jurisdiction.

3 **IT IS SO ORDERED.**

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5 Dated: July 21, 2014



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Audrey B. Collins
United States District Judge

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