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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON EDWARD SWANIGAN,
Petitioner,
v.
M. D. BITER, Warden
Respondent.

NO. CV 14-7055-RGK (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF
HABEAS CORPUS

On September 10, 2014, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody ("Petition") pursuant to 28 U.S.C. § 2254. Petitioner challenges his 1998 conviction in Los Angeles County Superior Court. (Petition at 2.)

I.

PROCEDURAL BACKGROUND

Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records in Petitioner's prior federal habeas corpus actions in this district: *Swanigan v.*

1 *Pliler*, CV 01-2485 RSWL (SGL) (“Swanigan I”)¹; *Swanigan v. Pliler*, CV 02-2355
2 RSWL (SGL) (“Swanigan II”);² *Swanigan v. Pliler*, CV 02-6784 ABC (SGL)
3 (“Swanigan III”), and *Swanigan v. Small*, CV 08-4954-RSWL (AGR) (“Swanigan
4 IV”).

5 On August 29, 2002, in Swanigan III, Petitioner filed a petition for writ of
6 habeas corpus by a person in state custody. *Id.*, Dkt. No. 1. Petitioner
7 challenged his 1998 conviction for two counts of robbery with enhancements.
8 (*Id.*, Dkt. No. 10 at 1.)

9 On November 20, 2002, the Court entered Judgment denying the petition
10 in Swanigan III and dismissing the action with prejudice as barred by the one-
11 year statute of limitations. *Id.*, Dkt. Nos. 10-11. On December 19, 2002,
12 Petitioner filed a Notice of Appeal. *Id.*, Dkt. No. 12. On July 30, 2003, the Ninth
13 Circuit denied Petitioner’s request for a certificate of appealability. *Id.*, Dkt. No.
14 21.

15 On August 6, 2008, in Swanigan IV, the Court summarily dismissed the
16 petition for lack of subject matter jurisdiction because it was a second or
17 successive petition. (*Id.*, Dkt. No. 3.) Petitioner did not appeal.

18 II.

19 DISCUSSION

20 The Petition was filed after enactment of the Antiterrorism and Effective
21 Death Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA
22 in reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059,
23 138 L. Ed. 2d 481 (1997).

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26 ¹ On April 6, 2001, the Court dismissed Swanigan I without prejudice
27 pursuant to Swanigan’s motion for voluntary dismissal so he could exhaust his
28 grounds for relief.

² On May 31, 2002, the Court dismissed Swanigan II without prejudice.

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

11 Here, the Petition is a second or successive petition that challenges the
12 same custody imposed by the same judgment of the state court as in *Swanigan*
13 *III*. (Petition at 2.) It plainly appears from the face of the Petition that Petitioner
14 has not received authorization from the Ninth Circuit Court of Appeals to file the
15 Petition. This Court must, therefore, dismiss the Petition as a second or
16 successive petition for which it lacks jurisdiction under 28 U.S.C. § 2244(b)(3).
17 *See Burton*, 127 S. Ct. at 796-98.


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

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III.
ORDER

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

DATED: September 18, 2014



R. GARY KLAUSNER
United States District Judge