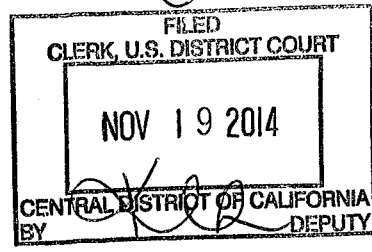


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I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF RECORD IN THIS ACTION ON THIS DATE.

DATED: 11-19-14
[Signature]
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TIMOTHY JEROME MACK,
Petitioner,
vs.
W.L. MONTGOMERY, Warden,
Respondent.

Case No. CV 14-8421-GHK (RNB)

ORDER SUMMARILY DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS FOR LACK OF SUBJECT
MATTER JURISDICTION

On October 30, 2014, petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody herein.

It appears from the face of the Petition that it is directed to a conviction sustained by petitioner in Los Angeles County Superior Court on March 15, 1994, for which petitioner subsequently received a sentence of 20 years, 8 months, plus two consecutive indeterminate life terms. This is the third federal habeas petition filed by petitioner directed to the same Los Angeles County Superior Court judgment of conviction. The first was a habeas petition filed by petitioner in this Court on January 4, 2000, in Case No. CV 00-0045-LGB (RNB). On May 9, 2000, Judgment was entered in Case No. CV 00-0045-LGB (RNB) denying the petition and dismissing the action with prejudice, based on the Magistrate Judge's finding and conclusion that the petition was time barred. Petitioner filed a Notice of Appeal from that Judgment.

1 However, his requests for a Certificate of Appealability (“COA”) were denied in turn
2 by this Court and the Ninth Circuit. Petitioner then filed another habeas petition
3 directed to the same judgment of conviction on March 2, 2011 in Case No. CV11-
4 1787-GHK (RNB). On March 11, 2011, Judgment was entered in Case No. CV11-
5 1787-GHK (RNB) summarily dismissing the action without prejudice for lack of
6 subject matter jurisdiction. Concurrently, this Court issued an order denying a COA.
7 Petitioner subsequently filed a timely Notice of Appeal from the Judgment, but his
8 request for a COA ultimately was denied by the Ninth Circuit on June 26, 2012.

9 The Petition now pending is governed by the provisions of the Antiterrorism
10 and Effective Death Penalty Act of 1996 (Pub. L. 104-132, 110 Stat. 1214) (“the
11 Act”) which became effective April 24, 1996. Section 106 of the Act amended 28
12 U.S.C. § 2244(b) to read, in pertinent part, as follows:

13 (1) *A claim presented in a second or successive habeas corpus*
14 *application under section 2254 that was presented in a prior*
15 *application shall be dismissed.*

16 (2) *A claim presented in a second or successive habeas corpus*
17 *application under section 2254 that was not presented in a prior*
18 *application shall be dismissed unless--*

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

22 (B)(i) *the factual predicate for the claim could not have*
23 *been discovered previously through the exercise of due diligence;*
24 *and*

25 (ii) *the facts underlying the claim, if proven and viewed*
26 *in light of the evidence as a whole, would be sufficient to*
27 *establish by clear and convincing evidence that, but for*
28 *constitutional error, no reasonable factfinder would have found*

1 *the applicant guilty of the underlying offense.*

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

6 ...

7 (C) *The court of appeals may authorize the filing of a*
8 *second or successive application only if it determines that the*
9 *application makes a prima facie showing that the application*
10 *satisfies the requirements of this subsection.*

11
12 The Petition now pending constitutes a second and/or successive petition
13 challenging the same conviction and sentence as petitioner's prior habeas petition in
14 Case No. CV 00-0045-LGB (RNB), within the meaning of 28 U.S.C. § 2244(b). See
15 McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009) (holding that dismissal of a
16 habeas petition as time barred under 28 U.S.C. § 2244(d)(1) constitutes a disposition
17 on the merits and renders a subsequent petition second or successive for purposes of
18 28 U.S.C. § 2244(b)). Thus, to the extent that petitioner now is purporting to raise
19 claims previously raised in Case No. CV 00-0045-LGB (RNB), § 2244(b)(1) compels
20 dismissal of those claims. To the extent that petitioner now is purporting to raise new
21 claims, it was incumbent on him under § 2244(b)(3)(A) to secure an order from the
22 Ninth Circuit authorizing the District Court to consider those claims, prior to his
23 filing of the instant Petition in the District Court. Petitioner's failure to do so
24 deprives the Court of subject matter jurisdiction. See Cooper v. Calderon, 274 F.3d
25 1270, 1274 (9th Cir. 2001), cert. denied, 538 U.S. 984 (2003).

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1 For the foregoing reasons, IT IS ORDERED that this action be summarily
2 dismissed, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the
3 United States District Courts.

4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5
6 DATED: _____

11/14/14

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9 _____
10 GEORGE H. KING
11 UNITED STATES DISTRICT JUDGE

12 Presented by: _____

13 Robert N. Block
14 United States Magistrate Judge
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