

1 guilty and denied the special allegations. (Petition at 1-2, 9-10;¹ Report and Recommendation of
2 United States Magistrate Judge (“R&R”), filed on October 29, 2013, Tinson v. Grounds, Warden,
3 Case No. CV 13-0968 ABC (JEM), at 2).²

4 Following a jury trial and a bifurcated trial before the court on the priors allegations in Los
5 Angeles County Superior Court, Case No. VA110174, Petitioner was found guilty as charged and
6 special allegations were found true. Petitioner was sentenced under the California’s Three Strikes
7 law to state prison for three consecutive terms amounting to a total of 95 years to life. (Petition
8 at 2, 10; R&R at 2).

9 On October 16, 2012, Petitioner filed a petition for writ of habeas corpus by a person in
10 state custody, pursuant to 28 U.S.C. Section 2254, in this Court, Tinson v. Grounds, Warden,
11 Case No. CV 12-8896 ABC (JEM) (“October 2012 Petition”). On January 10, 2013, Petitioner
12 voluntarily withdrew the October 2012 Petition. (Tinson v. Grounds, Warden, Case No. CV 12-
13 8896 ABC (JEM) Docket No. 9.)

14 On February 11, 2013, Petitioner filed another petition for writ of habeas corpus by a person
15 in state custody, pursuant to 28 U.S.C. § 2254, in this Court, Tinson v. Grounds, Warden, Case
16 No. CV 13-0968 ABC (JEM) (“February 2013 Petition”), challenging his conviction and/or sentence
17 in Los Angeles County Superior Court Case No. VA110174. (R&R at 1-2). Respondent filed an
18 Answer to the February 2013 Petition on May 14, 2013. Petitioner filed a Reply on August 19,
19 2013. On October 29, 2013, the Magistrate Judge issued his R&R, recommending that the
20 February 2013 Petition be dismissed with prejudice on the merits. (R&R at 1-21). The District
21 Court accepted the R&R and dismissed the February 2013 Petition on January 10, 2014. (See
22 Judgment, Tinson v. Grounds, Warden, Case No. CV 13-0968 ABC (JEM)).

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25 ¹ For ease of reference, the Court labels and refers to the pages in the Petition in consecutive
26 order, i.e., 1-16.

27 ² The Court takes judicial notice of the files and records in Tinson v. Grounds, Warden, Case
28 No. CV 13-0968 ABC (JEM). See United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (“In
particular, a court may take judicial notice of its own records in other cases, as well as the records
of an inferior court in other cases.”); accord United States v. Howard, 381 F.3d 873, 876 n. 1 (9th
Cir. 2004).

1 On January 21, 2015, Petitioner filed the instant Petition. In the Petition, Petitioner
2 challenges his conviction and/or sentence in Los Angeles County Superior Court Case No.
3 VA110174. (See Petition at 1-2, 9-10).

4 **DISCUSSION**

5 The present Petition is governed by the provisions of the Antiterrorism and Effective Death
6 Penalty Act of 1996 (“AEDPA”). AEDPA amended 28 U.S.C. § 2244(b) to read, in pertinent part,
7 as follows:

8 (b)(1) A claim presented in a second or successive habeas corpus
9 application under section 2254 that was presented in a prior application shall
10 be dismissed.

11 (2) A claim presented in a second or successive habeas corpus
12 application under section 2254 that was not presented in a prior application
13 shall be dismissed unless –

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

17 (B)(i) the factual predicate for the claim could not have been
18 discovered previously through the exercise of due diligence; and [¶]

19 (ii) the facts underlying the claim, if proven and viewed in light of the
20 evidence as a whole, would be sufficient to establish by clear and
21 convincing evidence that, but for constitutional error, no reasonable
22 factfinder would have found the applicant guilty of the underlying
23 offense.

24 (3)(A) Before a second or successive application permitted by this
25 section is filed in the district court, the applicant shall move in the appropriate
26 court of appeals for an order authorizing the district court to consider the
27 application.
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1 28 U.S.C. § 2244(b)(1)-(3)(A); see also Rule 9 of the Rules Governing § 2254 Cases in the United
2 States District Courts. In addition, Rule 4 of the Rules Governing § 2254 Cases in the United
3 States District Courts provides that if it plainly appears from the face of the petition and any
4 exhibits annexed to it that the Petitioner is not entitled to relief in the district court, the judge shall
5 summarily dismiss the petition.

6 The instant Petition is a second or successive petition challenging Petitioner's conviction
7 and/or sentence in Los Angeles County Superior Court Case No. VA110174. "If an application
8 is 'second or successive,' the petitioner must obtain leave from the Court of Appeals before filing
9 it with the district court." Magwood v. Patterson, 130 S.Ct. 2788, 2796 (2010). There is no
10 indication in the record that Petitioner has obtained permission from the Ninth Circuit Court of
11 Appeals to file a second or successive petition. "When the AEDPA is in play, the district court may
12 not, in the absence of proper authorization from the court of appeals, consider a second or
13 successive habeas application." Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (per
14 curiam), cert. denied, 538 U.S. 984, 123 S.Ct. 1793 (2003) (internal quotation marks and citation
15 omitted); accord Burton v. Stewart, 549 U.S. 147, 152, 127 S.Ct. 793, 796 (2007) (per curiam).
16 Because the Petition is a "second or successive" petition, the Court lacks jurisdiction to consider
17 the merits of Petitioner's Petition. See Magwood, 130 S.Ct. at 2796 ("if [petitioner's] application
18 [is] 'second or successive,' the District Court [must] dismiss[] it in its entirety because [petitioner]
19 failed to obtain the requisite authorization from the Court of Appeals[]"); accord Burton, 549 U.S.
20 at 152, 127 S.Ct. at 796. Accordingly, the Court will dismiss the Petition without prejudice to
21 Petitioner filing a new action if and when he obtains permission to file a successive petition.³

22 Based on the foregoing, IT IS ORDERED THAT the Petition is summarily dismissed without
23 prejudice for lack of jurisdiction.

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27 ³ If Petitioner obtains permission to file a second petition, he should file a new petition for writ
28 of habeas corpus. He should not file an amended petition in this action or use the case number
from this action because the instant action is being closed today. When Petitioner files a new
petition, the Court will give the petition a new case number.

1 CERTIFICATE OF APPEALABILITY

2 Under the AEDPA, a state prisoner seeking to appeal a district court’s final order in a
3 habeas corpus proceeding must obtain a Certificate of Appealability (“COA”) from the district judge
4 or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may issue “only if the applicant has made
5 a substantial showing of the denial of a constitutional right.” *Id.* at § 2253(c)(2); accord *Williams*
6 *v. Calderon*, 83 F.3d 281, 286 (9th Cir.), cert. denied, 517 U.S. 1183 (1996). “A petitioner satisfies
7 this standard by demonstrating that jurists of reason could disagree with the district court’s
8 resolution of his constitutional claims or that jurists could conclude the issues presented are
9 adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327,
10 123 S.Ct. 1029, 1034 (2003); see also *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S.Ct. 1595,
11 1603-04 (2000).

12 When a district court dismisses a petition on procedural grounds, the reviewing court should
13 apply a two-step analysis, and a COA should issue if the petitioner can show both: (1) “that jurists
14 of reason would find it debatable whether the district court was correct in its procedural ruling[.]”
15 and (2) “that jurists of reason would find it debatable whether the petition states a valid claim of
16 the denial of a constitutional right[.]” *Slack*, 529 U.S. at 478, 120 S.Ct. at 1600-01.

17 The Court is dismissing the Petition without prejudice because it is a second or successive
18 petition. Since the Petition is clearly a second or successive petition, Petitioner cannot make the
19 requisite showing “that jurists of reason would find it debatable whether the district court was
20 correct in its procedural ruling.” *Slack*, 529 U.S. at 478, 120 S.Ct. at 1600-01.

21 ORDER

22 Based on the foregoing, IT IS ORDERED THAT:

- 23 1. The Petition is **dismissed without prejudice** for lack of jurisdiction;
24 2. A Certificate of Appealability is **denied**.

25
26 DATED: February 20, 2015.



27
28 JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE