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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BARNARD MCGAUGHY,
Petitioner,
v.
E. VALENZUELA,
Respondent.

Case No. CV 15-2294 GW (JCG)

**ORDER SUMMARILY DISMISSING
ACTION WITHOUT PREJUDICE AND
DENYING CERTIFICATE OF
APPEALABILITY**

On March 27, 2015, petitioner Barnard McGaughy¹ (“Petitioner”), a California prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”). [Dkt. No. 1.] Notably, it is his *third* federal petition challenging his 2002 state court conviction for torture, assault, and robbery. What’s more, Petitioner filed the Petition even after the Ninth Circuit denied his request for permission to file a “second or successive” petition. Accordingly, and for the reasons discussed below, the Court finds that the Petition is an unauthorized “second or successive” petition, and summarily dismisses this action without prejudice for lack of jurisdiction. *See* 28 U.S.C. § 2244(b).

¹ Petitioner is also known as Barnard McGauthy. [*See* C.D. Cal. Case No. CV 07-1596 GW (FMO), Dkt. No. 26, at 1 n.1.]

1 By way of background, Petitioner first challenged his conviction in 2007. [See
2 C.D. Cal. Case No. CV 07-1596 GW (FMO), Dkt. No. 1.] That petition was denied.
3 [See *id.*, Dkt No. 26, 30, 31.]

4 On May 22, 2013, Petitioner filed a second petition challenging the same
5 conviction. [See C.D. Cal. Case No. 13-3656 GW (JCG), Dkt. No. 1.] On July 12,
6 2013, this Court dismissed that action for lack of jurisdiction, on the grounds that
7 Petitioner had not obtained authorization to file a “second or successive” petition. [See
8 *id.*, Dkt. No. 4, at 3.] At that time, the Court explained that “it was incumbent on
9 Petitioner under § 2244(b)(3)(A) to secure an order from the Ninth Circuit authorizing
10 this Court to consider the instant Petition prior to its filing.” [*Id.*]

11 On August 9, 2013, Petitioner filed an application with the Ninth Circuit
12 requesting permission to file a “second or successive” petition. [See Ninth Cir. Case
13 No. 13-72791, Dkt. No. 1.] On September 27, 2013, the Ninth Circuit denied
14 Petitioner’s application. [See *id.*, Dkt. No. 2.]

15 On March 27, 2015, Petitioner filed the instant petition, in which he *again*
16 challenges the same conviction. (Pet. at 2.)

17 However, Petitioner has *again* failed to obtain the Ninth Circuit’s authorization
18 to file a “second or successive” petition. See 28 U.S.C. § 2244(b).

19 Accordingly, the Court must dismiss this *third* action for lack of jurisdiction.
20 *See id.*

21 Additionally, for the reasons stated above, the Court finds that Petitioner has not
22 shown that reasonable jurists would find it debatable whether this Court was correct in
23 its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court
24 thus declines to issue a certificate of appealability.

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1 For the foregoing reasons, **IT IS ORDERED THAT** this action be
2 **SUMMARILY DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction,
3 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States
4 District Courts.

5 **IT IS FURTHER ORDERED THAT** a Certificate of Appealability be
6 **DENIED.**

7 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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10 DATED: May 4, 2015



11 HON. GEORGE H. WU
12 UNITED STATES DISTRICT JUDGE
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