

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
JS-6UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GREGORY LEON YOUNG,

Petitioner,

v.

CYNTHIA Y. TAMPKINS,

Respondent.

Case No. CV 16-05205 JFW (RAO)

ORDER SUMMARILY DISMISSING  
PETITION FOR LACK OF  
JURISDICTION AND DENYING A  
CERTIFICATE OF APPEALABILITY

On July 7, 2016, Petitioner Gregory Leon Young (“Petitioner”), a California state prisoner, constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) challenging a conviction received in August of 1989 (the “1989 Conviction”). (Pet. at 2, Dkt. No. 1.) Petitioner has challenged the 1989 Conviction in a habeas petition filed in this Court on at least one prior occasion.<sup>1</sup>

Petitioner challenged the 1989 Conviction in a habeas petition filed on September 26, 2003. (*See* Case No. 2:03-cv-06946-JFW-RZ, Dkt. No. 1.) The assigned Magistrate Judge reviewed that petition, and on October 14, 2003, issued an order to show cause why it should not be dismissed as untimely. (*Id.*, Dkt. No.

---

<sup>1</sup> The Court takes judicial notice of Petitioner’s other cases under Rule 201 of the Federal Rules of Evidence and *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012).

1 3.) Petitioner timely filed a response on October 30, 2003—but on November 12,  
2 2003, the Magistrate Judge issued a Report and Recommendation recommending  
3 dismissal with prejudice on statute of limitations grounds. (*Id.*, Dkt. No. 7.) The  
4 Court adopted the Report and Recommendation and entered judgment on December  
5 10, 2003. (*Id.*, Dkt. Nos. 10-11.) Petitioner then appealed to the Ninth Circuit,  
6 which denied his request for a certificate of appealability on March 2, 2004. (*See*  
7 *id.*, Dkt. Nos. 18-19.)

8 Because Petitioner challenged the 1989 Conviction in a prior habeas petition  
9 in this Court, the Petition must be dismissed as second or successive.

### 10 I. DISCUSSION

11 The Petition is governed by the Antiterrorism and Effective Death Penalty  
12 Act of 1996 (“AEDPA”), which provides, in pertinent part, as follows:

13 (b)(1) A claim presented in a second or successive habeas  
14 corpus 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 rule of  
20 constitutional law, made retroactive to cases on collateral review  
21 by the Supreme Court, that was previously unavailable; or

22 (B)(i) the factual predicate for the claim could not have been  
23 discovered previously through the exercise of due diligence; [¶]  
24 (ii) the facts underlying the claim, if proven and viewed in light  
25 of the evidence as a whole, would be sufficient to establish by  
26 clear and convincing evidence that, but for constitutional error,  
27 no reasonable factfinder would have found the applicant guilty  
28 of the underlying offense.

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

///  
///  
///

1 See 28 U.S.C. § 2244(b)(1)-(3)(A); see also Rule 9 of the Rules Governing § 2254  
2 Cases in the United States District Courts (petitioners must obtain an order from the  
3 appropriate court of appeals authorizing the district court to consider a second or  
4 successive petition before presenting such a petition to the district court).

5 Here, the Petition challenges the 1989 Conviction, which was dismissed with  
6 prejudice as untimely on December 10, 2003. Accordingly, the Petition is a second  
7 or successive petition. See *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009)  
8 (dismissal on statute of limitations grounds is a disposition on the merits rendering  
9 a subsequently filed petition second or successive). “If an application is ‘second or  
10 successive,’ the petitioner must obtain leave from the Court of Appeals before filing  
11 it with the district court.” *Magwood v. Patterson*, 561 U.S. 320, 330-31, 130 S. Ct.  
12 2788, 177 L. Ed. 2d 592 (2010). Petitioner, however, has not established that he  
13 obtained permission from the Ninth Circuit to file a second or successive petition.

14 Therefore, this Court lacks jurisdiction to consider the merits of Petitioner’s  
15 Petition. *Magwood*, 561 U.S. at 331 (“[I]f [petitioner’s] application was ‘second or  
16 successive,’ the District Court should have dismissed it in its entirety because he  
17 failed to obtain the requisite authorization from the Court of Appeals.”); see also  
18 *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (“When the AEDPA is in  
19 play, the district court may not, in the absence of proper authorization from the  
20 court of appeals, consider a second or successive habeas petition.”).

21 Further, to the extent that Petitioner seeks to establish that he falls within one  
22 of the exceptions provided for under 28 U.S.C. § 2244(b)(2), he must first present  
23 any such claim to the Ninth Circuit, not this Court. See 28 U.S.C. § 2244(b)(3)(A).

## 24 **II. CERTIFICATE OF APPEALABILITY**

25 Under AEDPA, a state prisoner seeking to appeal a district court’s final order  
26 in a habeas corpus proceeding must obtain a Certificate of Appealability (“COA”)  
27 from the district judge or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may  
28 issue “only if the applicant has made a substantial showing of the denial of a

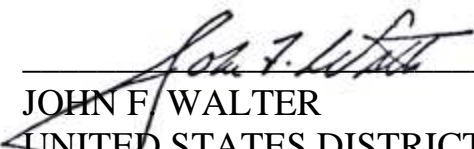
1 constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard  
2 by demonstrating that jurists of reason could disagree with the district court’s  
3 resolution of his constitutional claims or that jurists could conclude the issues  
4 presented are adequate to deserve encouragement to proceed further.” *Miller-El v.*  
5 *Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

6 When the Court dismisses a petition on procedural grounds, it must issue a  
7 COA if the petitioner shows: (1) “that jurists of reason would find it debatable  
8 whether the petition states a valid claim of the denial of a constitutional right;” and  
9 (2) “that jurists of reason would find it debatable whether the district court was  
10 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct.  
11 1595, 146 L. Ed. 2d 542 (2000). Here, the Court is dismissing the Petition without  
12 prejudice because it is a second or successive petition filed without proper  
13 authorization from the Ninth Circuit. Because the Petition is a second or successive  
14 petition, Petitioner cannot make the requisite showing that jurists of reason would  
15 find it debatable whether the Court is correct in its procedural ruling. Accordingly,  
16 the Court denies Petitioner a certificate of appealability.

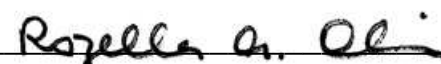
17 **III. ORDER**

18 In light of the foregoing, IT IS ORDERED THAT: (1) Petitioner’s Petition is  
19 **DISMISSED** without prejudice because this Court lacks jurisdiction to consider it;  
20 and (2) a Certificate of Appealability is **DENIED**.

21  
22 DATED: July 21, 2016

  
\_\_\_\_\_  
JOHN F. WALTER  
UNITED STATES DISTRICT JUDGE

23  
24 Presented by:

25  
26   
\_\_\_\_\_  
27 ROZELLA A. OLIVER  
28 UNITED STATES MAGISTRATE JUDGE