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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JAMES H. GARCIA,  
  
Petitioner,  
  
v.  
  
DEBBIE ASONCION, Warden,  
  
Respondent.

Case No. CV 16-8023-DSF-KK  
  
MEMORANDUM AND ORDER  
SUMMARILY DENYING PETITION  
AND DISMISSING ACTION

**I.**  
**INTRODUCTION**

Petitioner James H. Garcia (“Petitioner”) has filed a pro se Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (“Petition”) challenging his 2006 conviction and sentence for second degree murder. As discussed below, the Court finds the Petition is a second or successive petition and thus, summarily DENIES the Petition and DISMISSES this action without prejudice.

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1 **II.**

2 **BACKGROUND**

3 On August 7, 2006, following a jury trial in California Superior Court for the  
4 County of Los Angeles, Petitioner was convicted of second degree murder in  
5 violation of section 187 of the California Penal Code. ECF Docket No. (“Dkt.”) 1,  
6 Pet. at 2; see also Garcia v. Uribe, No. CV 09-2919-DSF (CW), 2011 WL 3664901,  
7 at \*1 (C.D. Cal. July 19, 2011). The jury also found Petitioner personally used a  
8 deadly or dangerous weapon (a knife) in the commission of the offense in violation  
9 of section 12022(b)(1) of the California Penal Code. Id. On January 16, 2007,  
10 Petitioner was sentenced to a term of thirty-six years to life in state prison. Id.

11 Petitioner appealed his conviction to the California Court of Appeal, which  
12 affirmed the judgment in an unpublished decision on February 22, 2008. Garcia,  
13 2011 WL 3664901, at \*1. Petitioner filed a Petition for Review in the California  
14 Supreme Court, which was summarily denied on April 30, 2008. Id.

15 On November 19, 2008, Petitioner filed a habeas petition in Los Angeles  
16 Superior Court, which was denied in a reasoned order on February 5, 2009. Id. On  
17 February 17, 2009, Petitioner filed a habeas petition in the California Supreme  
18 Court, which was denied without comment or citation to authority on July 15,  
19 2009. Id.

20 On April 27, 2009, Petitioner filed a habeas petition in this Court (the “2009  
21 Petition”) challenging his 2006 conviction on the grounds of (1) false evidence; (2)  
22 improperly obtained confession; and (3) judicial bias. Id. On August 22, 2011, the  
23 Court denied the 2009 Petition on the merits and dismissed the action with  
24 prejudice. Garcia v. Uribe, No. CV 09-2919-DSF (CW), 2011 WL 3667761, at \*1  
25 (C.D. Cal. Aug. 22, 2011).

26 On June 15, 2015, Petitioner filed a habeas petition with the California Court  
27 of Appeal, case number B264769, on the grounds of (1) ineffective assistance of  
28 counsel; and (2) “vindictive prosecution.” Pet. at 2-3; California Courts,

1 Appellate Courts Case Information, Docket, (Oct. 28, 2016, 3:56 PM),  
2 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc\\_id=2](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=211685&doc_no=B264769)  
3 [111685&doc\\_no=B264769](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=2&doc_id=211685&doc_no=B264769). On June 26, 2015, the California Court of Appeal  
4 denied the petition. Id.

5 On July 24, 2015, Petitioner filed a habeas petition with the California  
6 Supreme Court, case number S228063, on the grounds of (1) ineffective assistance  
7 of counsel; and (2) “vindictive prosecution.” Pet. at 3; California Courts,  
8 Appellate Courts Case Information, Docket, (Oct. 28, 2016, 3:58 PM),  
9 [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc\\_id=2](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2115547&doc_no=S228063)  
10 [115547&doc\\_no=S228063](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2115547&doc_no=S228063). On October 21, 2015, the California Supreme Court  
11 denied the petition with citation to In re Robbins, 18 Cal. 4th 770, 780 (1998) and  
12 In re Clark, 5 Cal. 4th 750, 767-69 (1993). Id.

13 On October 18, 2016, Petitioner constructively filed the instant Petition  
14 challenging his 2006 conviction on the grounds of (1) ineffective assistance of  
15 counsel; and (2) “vindictive prosecution.” Pet. at 5-24.

16 On October 31, 2016, the Court issued an Order to Show Cause why the  
17 Petition should not be summarily dismissed as a second or successive petition  
18 which has not been authorized by the Ninth Circuit. Dkt. 4. On January 13, 2017,  
19 Petitioner constructively filed a response to the Order to Show Cause in which he  
20 concedes “this is a second petition,” and fails to provide authorization from the  
21 Ninth Circuit allowing such second petition. Dkt. 10.

### 22 III.

### 23 DISCUSSION

### 24 **THE PETITION IS SUBJECT TO DISMISSAL AS A SECOND OR** 25 **SUCCESSIVE PETITION**

26 Habeas petitioners generally may file only one habeas petition challenging  
27 their conviction or sentence. See 28 U.S.C. § 2244(b)(1). Hence, if a prior petition  
28 raised claims that were adjudicated on the merits, petitioner must “move in the

1 appropriate court of appeals for an order authorizing the district court to consider  
2 the [second or successive petition].” Id. § 2244(b)(3)(A); McNabb v. Yates, 576  
3 F.3d 1028, 1029 (9th Cir. 2009); Goodrum v. Busby, 824 F.3d 1188, 1194 (9th Cir.  
4 2016) (“As a general principle, . . . a petition will not be deemed second or  
5 successive unless, at a minimum, an earlier-filed petition has been finally  
6 adjudicated.”). Absent proper authorization from the court of appeals, district  
7 courts lack jurisdiction to consider second or successive petitions and must dismiss  
8 such petitions without prejudice to refile if the petitioner obtains the necessary  
9 authorization. Burton v. Stewart, 549 U.S. 147, 152-53, 127 S. Ct. 793, 166 L. Ed.  
10 2d 628 (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (“When  
11 the AEDPA is in play, the district court may not, in the absence of proper  
12 authorization from the court of appeals, consider a second or successive habeas  
13 application.” (citation omitted)); 28 U.S.C. § 2244(b)(2).

14 Here, the instant Petition, like Petitioner’s 2009 Petition, challenges  
15 Petitioner’s 2006 conviction and sentence. See Dkt. 1, Pet. The Court dismissed  
16 Petitioner’s 2009 Petition on the merits. See Garcia, 2011 WL 3664901, report and  
17 recommendation adopted, 2011 WL 3667761. Consequently, the instant Petition is  
18 second or successive to the 2009 Petition. As Petitioner has not presented any  
19 documentation indicating the Ninth Circuit has issued “an order authorizing the  
20 district court to consider the application,” the Court lacks jurisdiction over the  
21 claims, and the instant Petition is subject to dismissal. 28 U.S.C. § 2244(b)(3)(A).

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**IV.**  
**ORDER**

Thus, it is ORDERED that Judgment be entered summarily DENYING the  
Petition and DISMISSING this action without prejudice.

Dated: 1/27/17



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HONORABLE DALE S. FISCHER  
United States District Judge

Presented by:



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KENLY KIYA KATO  
United States Magistrate Judge