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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 CHARLES F. CODDIE,	}	Case No. CV 16-09404-PA (KES)
12 Petitioner,		ORDER SUMMARILY
13 v.		DISMISSING PETITION FOR
14		WRIT OF HABEAS CORPUS FOR
15 JOHN SUTTON, Warden,		LACK OF SUBJECT MATTER
16 Respondent.	}	JURISDICTION
17	}	

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19 On December 20, 2016, Charles F. Coddie (“Petitioner”) filed a Petition
20 for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C.
21 § 2254. (Dkt. 1.) Petitioner also consented to having a United States Magistrate
22 Judge conduct all proceedings in this case. (Dkt. 2.) The Petition is the second
23 habeas corpus petition that Petitioner has filed in this Court stemming from his
24 2002 state court convictions and sentence in the Los Angeles Superior Court,
25 case no. KA054598.

26 Under Rule 4 of the Rules Governing Section 2254 Cases in the United
27 States District Courts, a habeas petition filed by a prison in state custody
28 “must” be summarily dismissed “[i]f it plainly appears from the petition and

1 any attached exhibits that the petitioner is not entitled to relief in the district
2 court[.]” For the reasons set forth below, the Petition must be dismissed as a
3 second or successive petition pursuant to 28 U.S.C. § 2244(b).

4 I.

5 BACKGROUND

6 A. State Court Proceedings

7 On April 17, 2002, Petitioner was convicted by a Los Angeles County
8 Superior Court jury of one count of attempted murder and one count of assault
9 with a firearm. The jury also found true a number of associated allegations
10 regarding petitioner’s firearm use and infliction of great bodily injury on the
11 victim. The trial court sentenced petitioner to imprisonment for an
12 indeterminate term of 30 years to life.

13 Petitioner appealed, claiming that the trial court erred in failing to give
14 jury instructions on attempted voluntary manslaughter and lesser included
15 offenses. He also claimed that two of the jury instructions given were
16 prejudicial and unconstitutionally coercive. On September 30, 2003, the
17 California Court of Appeal denied these claims and affirmed Petitioner’s
18 conviction. People v. Coddie, 2003 WL 22244068, at *3 (Cal. App. 2d Sept.
19 30, 2003) (unpublished). Petitioner then filed a petition for review in the
20 California Supreme Court, which was denied without comment or citation to
21 authority on December 17, 2003.

22 Petitioner’s first state collateral challenge consisted of a petition for writ
23 of habeas corpus constructively filed in the Los Angeles County Superior
24 Court on April 12, 2016, approximately thirteen years after Petitioner’s
25 sentence became final. Petitioner alleged therein that the prosecution failed to
26 plead and prove Petitioner’s firearm enhancements, and that Petitioner was
27 denied effective assistance of appellate counsel. That petition was denied on
28 April 18, 2016. (Dkt. 1 at 12-15.) The court found that Petitioner failed to

1 explain his significant delay in seeking habeas relief, and that these issues were
2 not raised on appeal and therefore were barred from state habeas
3 consideration. (*Id.*)

4 Petitioner then raised the same claims to the California Court of Appeal
5 on May 2, 2016. (Dkt. 1 at 4.) On May 5, 2016, the Court of Appeal
6 summarily denied Petitioner's habeas petition without comment or citation to
7 authority. (Dkt. 1 at 18.) Petitioner then raised the same claims in a habeas
8 petition to the California Supreme Court on June 29, 2016. (Dkt. 1 at 4.) On
9 June 29, 2016, the California Supreme Court denied Petitioner's habeas
10 petition without comment or citation to authority. (Dkt. 1 at 21.)

11 **B. Prior Federal Habeas Petitions¹**

12 **1. Motion for Extension of Time to File Habeas Petition.**

13 On October 25, 2004, Petitioner filed a "Motion for Extension" which
14 was assigned case no. 2:04-cv-08811-GLT-FMO. On November 4, 2016, the
15 Court denied the motion and administratively closed the case. The Court
16 found that, because Petitioner did not currently have a petition for habeas
17 corpus pending before the Court, the case-and-controversy requirement of
18 Article III was not met.

19 **2. First Federal Habeas Petition.**

20 On December 3, 2004, Petitioner filed a Petition for Writ of Habeas
21 Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("First
22 Petition"), which was assigned case no. 2:04-cv-09874-PA-FMO. The First
23 Petition challenged Petitioner's convictions in Los Angeles County Superior
24 Court, case no. KA054598. The First Petition raised four claims relating to
25 jury instructions that the trial court either improperly gave or erroneously

26 ¹ The Court takes judicial notice of its own records. Fed. R. Evid.
27 201(b)(2); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 failed to give. (See 2:04-cv-9874-PA-FMO, Dkt. 19 at 5-6 [Report and
2 Recommendation].)

3 On July 18, 2005, the Magistrate Judge assigned to the case issued a
4 Report and Recommendation recommending that the First Petition be
5 dismissed. Id. at 22. Petitioner did not file objections. On August 23, 2005, the
6 Court adopted the Report and Recommendation and dismissed the First
7 Petition with prejudice. (2:04-cv-9874-PA-FMO, Dkt. 21 [Order Adopting
8 Report and Recommendation].) The Court also declined to issue a certificate
9 of appealability under 28 U.S.C. § 2253(c)(2).

10 II.

11 DISCUSSION

12 The instant Petition raises two claims for relief: (1) the prosecution failed
13 to plead and prove a gang/firearm allegation² that added an indeterminate
14 term of 25 years to life to Petitioner's sentence; and (2) ineffective assistance of
15 appellate counsel for failing to raise the issue in ground one. (Dkt. 1 at 5-6 ¶ 8.)

16 The Petition now pending is governed by 28 U.S.C. § 2244(b), which
17 provides in pertinent part as follows:

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

21 (2) A claim presented in a second or successive habeas corpus
22 application under section 2254 that was not presented in a prior

23 ² Petitioner's claim in the instant Petition is that California Penal Code
24 section 12022.53(e)(1) was not pled or proven by the prosecution. Section
25 12022.53(e)(1) is a gang enhancement, for which Petitioner was neither
26 charged nor convicted. Instead, he was convicted under sections 12022.53(b-
27 d), which relate to Petitioner's use of a firearm during the crime, and do not
28 require a showing of gang affiliation.

1 application shall be dismissed unless--

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

5 (B)(i) the factual predicate for the claim could not have been
6 discovered previously through the exercise of due diligence; and

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

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

16 28 U.S.C. § 2244(b) (emphasis added).

17 The Petition now pending constitutes a second and/or successive
18 petition challenging the same conviction as Petitioner's prior habeas petition,
19 within the meaning of 28 U.S.C. § 2244(b). Thus, it was incumbent on
20 Petitioner under § 2244(b)(3)(A) to secure an order from the Ninth Circuit
21 authorizing the District Court to consider his new claims prior to the filing of
22 the instant Petition. Petitioner's failure to secure an order from the Ninth
23 Circuit deprives this Court of subject matter jurisdiction. Cooper v. Calderon,
24 274 F.3d 1270, 1274 (9th Cir. 2001), cert. denied, 538 U.S. 984 (2003).

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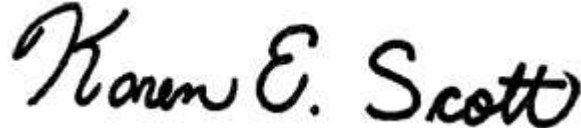
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1 IT IS THEREFORE ORDERED that this action be summarily
2 dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section
3 2254 Cases in the United States District Courts.

4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: December 28, 2016

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9 KAREN E. SCOTT
10 United States Magistrate Judge
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