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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION

ELERI CHARLES,)	Case No. CV 17-03472-BRO (AS)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
v.)	
)	
STATE OF CALIFORNIA,)	
)	
Respondent.)	
_____)	

BACKGROUND

On May 8, 2017, Petitioner, a prisoner in state custody proceeding pro se, filed "A Petition for a Writ of Habeas Corpus Under Section 2254, or in the Alternative a Writ of Error Coram Nobis, 18 U.S.C. 1651(a) (Docket Entry No. 1), which the Court construes as Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition"). Petitioner challenges his 2009 conviction (pursuant to a plea of no contest) for sexual penetration by a foreign object and for

1 forcible rape and the five-year sentence he received for that
2 conviction in the Angeles County Superior Court¹ (Case No.
3 LA056220). The Petition alleges the following grounds for
4 federal habeas relief: (1) The trial court failed to specify to
5 Petitioner that the registration requirement for a sex offender
6 under California Penal Code § 2009 was lifelong; and (2)
7 Petitioner's guilty plea was unintelligent and was based on the
8 ineffective assistance of counsel, because the trial court and
9 Petitioner's trial counsel failed to advise Petitioner of the
10 lifelong registration requirement. (Petition at 1-19,
11 Petitioner's Affidavit dated May 2, 2017 [2 pages]).
12

13 On October 17, 2011, Petitioner filed a Petition for Writ of
14 Habeas Corpus pursuant to 28 U.S.C. § 2254 in which he challenged
15 the same 2009 conviction. See Charles Eleri v. James D. Hartley,
16 CV 11-09169-BRO (AS); (Docket Entry No. 1) ("the first prior
17 habeas action"). On August 7, 2014, the Court issued an Order
18 and Judgment denying that habeas petition with prejudice, in
19 accordance with the findings and conclusions of the Magistrate
20 Judge. (Id.; Docket Entry Nos. 61-62). On the same date, the
21 Court denied a certificate of appealability. (Id.; Docket Entry
22 No. 63). On January 15, 2015, the Court denied a motion for
23 relief from Judgment pursuant to Fed. R. Civ. P. 60(b)(6). (Id.;
24 Docket Entry No. 70). On June 15, 2015, the Ninth Circuit Court
25

26 ¹ On April 16, 2009, Petitioner was convicted (pursuant
27 to a plea of no contest) of one count of sexual penetration and
28 one count of rape. On May 8, 2009, Petitioner was sentenced to
prison for 5 years. (See Charles Eleri v. James D. Hartley, Case
No. CV 11-09169-BRO (AS); Docket No. 55 at 2).

1 of Appeals denied Petitioner's request for a certificate of
2 appealability. (Id.; Docket Entry No. 71).

3
4 On August 23, 2016, Petitioner filed a Petition for Writ of
5 Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C.
6 § 2254 in which he challenged the same 2009 conviction. See
7 Charles Eleri v. James D. Hartley, CV 16-06328-BRO (AS); Docket
8 Entry No. 1) ("the second prior habeas action"). On August 29,
9 2016, the Court issued an Order of Dismissal and Judgment
10 dismissing that habeas petition without prejudice as an
11 unauthorized second or successive petition. (Id.; Docket Entry
12 Nos. 3-4). On September 15, 2016, the Court issued an Order
13 denying a motion for relief from Judgment pursuant to Fed. R.
14 Civ. P. 60(b)(2) and (b)(6). (Id.; Docket Entry No. 6).

15
16 **DISCUSSION**

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18 The Antiterrorism and Effective Death Penalty Act of 1996
19 ("AEDPA"), enacted on April 24, 1996, provides in pertinent part
20 that:

21 (a) No circuit or district judge shall be required
22 to entertain an application for a writ of habeas corpus
23 to inquire into the detention of a person pursuant to a
24 judgment of a court of the United States if it appears
25 that the legality of such detention has been determined
26 by a judge or court of the United States on a prior
27 application for a writ of habeas corpus, except as
28 provided in §2255.

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

(2) A claim presented in a second or successive
habeas corpus application under section 2254 that was

1 not presented in a prior application shall be dismissed
2 unless--

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

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

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

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

21 (B) A motion in the court of appeals for an order
22 authorizing the district court to consider a second or
23 successive application shall be determined by a three-
24 judge panel of the court of appeals.

25 (C) The court of appeals may authorize the filing
26 of a second or successive application only if it
27 determines that the application makes a prima facie
28 showing that the application satisfies the requirements
of this subsection.

(D) The court of appeals shall grant or deny the
authorization to file a second or successive application
not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a
court of appeals to file a second or successive
application shall not be appealable and shall not be the
subject of a Petition for Rehearing or for a Writ of
Certiorari.

(4) A district court shall dismiss any claim
presented in a second or successive application that the
court of appeals has authorized to be filed unless the
applicant shows that the claim satisfies the
requirements of this section. 28 U.S.C. § 2244.

28 U.S.C. § 2244 (b) (3) "creates a 'gatekeeping' mechanism for

1 the consideration of second or successive applications in district
2 court. The prospective applicant must file in the court of
3 appeals a motion for leave to file a second or successive habeas
4 application in the district court. § 2244(b)(3)(A).” Felker v.
5 Turpin, 518 U.S. 651, 657 (1996).

6
7 The instant Petition, the first prior habeas action, and the
8 second prior habeas action all challenge Petitioner’s custody
9 pursuant to the same 2009 judgment entered by the Los Angeles
10 County Superior Court. Accordingly, the instant Petition, filed
11 on May 8, 2017, well after the effective date of the AEDPA, is a
12 second or successive habeas petition for purposes of 28 U.S.C. §
13 2244. Therefore, Petitioner was required to obtain authorization
14 from the Court of Appeals before filing the present Petition. See
15 28 U.S.C. §2244(b)(3)(A). No such authorization has been obtained
16 in this case.

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18 Moreover, the claims asserted in the instant Petition do not
19 appear to fall within the exceptions to the bar on second or
20 successive petitions because the asserted claims are not based on
21 newly discovered facts or a “a new rule of constitutional law,
22 made retroactive to cases on collateral review by the Supreme
23 Court, that was previously unavailable.” Tyler v. Cain, 533 U.S.
24 656, 662 (2001). However, this determination must be made by the
25 United States Court of Appeals upon a petitioner’s motion for an
26 order authorizing the district court to consider his second or
27 successive petition. 28 U.S.C. § 2244(b); see also Burton v.
28 Stewart, 549 U.S. 147, 157 (2007) (where the petitioner did not

1 receive authorization from the Court of Appeals before filing
2 second or successive petition, "the District Court was without
3 jurisdiction to entertain [the petition]"); Barapind v. Reno, 225
4 F.3d 1100, 1111 (9th Cir. 2000) ("[T]he prior-appellate-review
5 mechanism set forth in § 2244(b) requires the permission of the
6 court of appeals before 'a second or successive habeas application
7 under § 2254' may be commenced."). Because Petitioner has not
8 obtained authorization from the Ninth Circuit Court of Appeals,
9 this Court cannot entertain the present Petition. See Burton v.
10 Stewart, supra.

11
12 **ORDER**

13
14 Accordingly, IT IS ORDERED that the Petition be dismissed
15 without prejudice.

16
17 LET JUDGMENT BE ENTERED ACCORDINGLY.

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19 DATED: May 11, 2017

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22 _____
23 BEVERLY REID O'CONNELL
24 UNITED STATES DISTRICT JUDGE
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