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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CALVIN S. SECREST,)	CASE NO. CV 17-4061-RGK (PJW)
)	
Petitioner,)	
)	[PROPOSED] ORDER DISMISSING
v.)	SECOND OR SUCCESSIVE HABEAS CORPUS
)	PETITION AND DENYING CERTIFICATE
S. HATTON, WARDEN,)	OF APPEALABILITY
)	
Respondent.)	
_____)	

16 Before the Court is Petitioner's latest attempt to challenge his
17 February 2002 sentence, following his conviction in Los Angeles County
18 Superior Court for first degree robbery, possession of a gun, and
19 evasion of police. (Petition at 2.) This is the fourth time that
20 Petitioner has attempted to challenge his sentence in this court. His
21 first petition in 2009 was dismissed as untimely. (*Secrest v. Kramer*,
22 CV 09-2291-RGK (JWJ), July 8, 2009 Order Accepting Report and
23 Recommendation of United States Magistrate Judge.) Petitioner then
24 attempted to appeal the Court's ruling, but his application for a
25 certificate of appealability was denied. (*Secrest v. Kramer*, CCA No.
26 09-56300, February 28, 2011 Order.) His second and third petitions in
27 June 2012 and May 2014 were dismissed as unauthorized second or
28 successive petitions. (*Secrest v. Brazelton*, CV 12-4901-RGK (PJW),


1 June 18, 2012 Order; *Secrest v. Sherman*, CV 14-3948-RGK (PJW), May 29,
2 2014 Order.) The instant Petition must be dismissed for the same
3 reason.

4 A petition that is dismissed for untimeliness "presents a
5 'permanent and incurable' bar to federal review of the underlying
6 claims" and renders a subsequent petition second or successive.
7 *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Absent an order
8 from the Ninth Circuit, Petitioner may not bring a habeas petition
9 challenging his February 2002 sentence in this court. See 28 U.S.C.
10 § 2244; see also *Burton v. Stewart*, 549 U.S. 147, 157 (2007) (holding
11 district court lacks jurisdiction to consider the merits of a second
12 or successive petition absent prior authorization from the circuit
13 court).


14 Further, because Petitioner has not made a substantial showing of
15 the denial of a constitutional right or that the court erred in its
16 ruling, Petitioner is not entitled to a certificate of appealability.
17 See 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b); *Miller-El v.*
18 *Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473,
19 484 (2000).

20 IT IS SO ORDERED.

21 DATED: June 6, 2017

22 
23 _____
24 R. GARY KLAUSNER
25 UNITED STATES DISTRICT JUDGE

24 Presented by:

25 
26 _____
27 PATRICK J. WALSH
28 UNITED STATES MAGISTRATE JUDGE

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