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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES DAVID LOGAN II,)	NO. CV 17-4277-SJO(E)
)	
Petitioner,)	
)	
v.)	ORDER OF DISMISSAL
)	
WARDEN BOSS DAVID DAVIES,)	
)	
Respondent.)	
_____)	

On June 8, 2017, Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody." The Petition challenges a 2013 Los Angeles Superior Court "conviction and/or sentence" (Petition at 2). Petitioner previously challenged this same 2013 Superior Court proceeding in a prior habeas corpus petition filed in this Court. See Logan v. Music, CV 16-6364-SJO(E). On March 20, 2017, this Court entered Judgment in Logan v. Music, CV 16-6364-SJO(E), denying and dismissing the prior petition with prejudice as untimely.

The Court must dismiss the present Petition in accordance with 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and

1 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
2 a petitioner seeking to file a "second or successive" habeas petition
3 first obtain authorization from the Court of Appeals. See Burton v.
4 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
5 authorization from Court of Appeals before filing second or successive
6 petition, "the District Court was without jurisdiction to entertain
7 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
8 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
9 requires the permission of the court of appeals before 'a second or
10 successive habeas application under § 2254' may be commenced").
11 Contrary to Petitioner's apparent argument, a petition need not be
12 repetitive to be "second or successive," within the meaning of 28
13 U.S.C. section 2244(b). See, e.g., Thompson v. Calderon, 151 F.3d
14 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965 (1998); Calbert v.
15 Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008). The
16 dismissal of a habeas petition as untimely "constitutes an
17 adjudication on the merits that renders future petitions under § 2254
18 challenging the same conviction 'second or successive' petitions under
19 § 2244(b)." McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009).
20 Petitioner evidently has not yet obtained authorization from the Ninth
21 Circuit Court of Appeals.¹ Consequently, this Court cannot entertain
22 the present Petition. See Burton v. Stewart, 549 U.S. at 157; see
23 also Remsen v. Att'y Gen. of Calif., 471 Fed. App'x 571, 571 (9th Cir.

24
25 ¹ The docket for the United States Court of Appeals for
26 the Ninth Circuit, available on the Pacer database on
27 www.pacer.gov does not reflect that anyone named James David
28 Logan II has received authorization to file a second or
successive petition. See Mir v. Little Company of Mary Hosp.,
844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice
of court records).

1 2012) (if a petitioner fails to obtain authorization from the Court of
2 Appeals to file a second or successive petition, "the district court
3 lacks jurisdiction to consider the petition and should dismiss it.")
4 (citation omitted).

5
6 For all of the foregoing reasons, the Petition is denied and
7 dismissed without prejudice.²

8
9 LET JUDGMENT BE ENTERED ACCORDINGLY.

10
11 DATED: June 14, 2017.

12
13 *S. James Otero*

14
15 _____
16 S. JAMES OTERO
17 UNITED STATES DISTRICT JUDGE

18 PRESENTED this 9th day
19 of June, 2017, by:

20
21 _____
22 /s/
23 CHARLES F. EICK
24 UNITED STATES MAGISTRATE JUDGE

25
26 ² Ninth Circuit Rule 22-3(a) provides that "if a second
27 or successive petition . . . is mistakenly submitted to the
28 district court, the district court shall refer it to the court of
appeals." Assuming arguendo that the conflict between 28 U.S.C.
section 2244(b) and Rule 22-3(a) does not invalidate the latter,
dismissal rather than "reference" still would be appropriate
herein. It is apparent that Petitioner submitted the present
Petition to this Court intentionally rather than mistakenly.