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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

RICHARD JACKSON,  
Petitioner,  
v.  
ERIC ARNOLD, Warden,  
Respondent.

No. CV 17-6524-RGK (PLA)

**ORDER DISMISSING HABEAS PETITION  
AS SUCCESSIVE**

**I.**

**BACKGROUND**

Richard Jackson (“petitioner”) initiated this action on September 5, 2017, by filing a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (“2d 2017 Petition” or “2d 2017 Pet.”). The 2d 2017 Petition challenges his October 27, 1997, conviction in the Los Angeles County Superior Court, case number SA030662, for burglary with possession of a firearm (Cal. Penal Code §§ 459, 12021). (2d 2017 Pet. at 3).<sup>1</sup> Along with his 2d 2017 Petition, petitioner filed a document captioned “Lower Court Ruling” (“Notice”) in which he states that he is

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<sup>1</sup> For ease of reference, the Court refers to the ECF-generated page numbers when referring to the 2d 2017 Petition.

1 letting the Court know that the California superior court made a ruling on petitioner’s habeas petition  
2 in that court, “but everything else remains exactly the same.” (Notice at 1 (citing to pages 47 and 48  
3 of the 2d 2017 Petition)).

4 The Court observes that on August 1, 2017, petitioner filed an earlier habeas petition in this  
5 Court, in case number CV 17-5679-RGK (PLA) (“CV 17-5679”), also challenging his 1997 conviction  
6 (“1st 2017 Petition”). The 1st 2017 Petition, which raises the same claim(s) raised by petitioner  
7 herein (compare 2d 2017 Pet. at 5 with 1st 2017 Pet. at 5), was dismissed with prejudice as  
8 successive, as petitioner had previously filed a habeas petition in this Court, in case number CV 00-  
9 2642-ABC (CW) (“CV 00-2642”), also challenging his 1997 conviction (“2000 Petition”). (CV 17-5679,  
10 ECF No. 3). The 2000 Petition was dismissed with prejudice on the merits, pursuant to the Judgment  
11 entered on April 17, 2003. (Case No. CV 00-2642, ECF No. 30). Petitioner’s request for a certificate  
12 of appealability was denied by the District Judge assigned to that case. (Case No. CV 00-2642, ECF  
13 No. 34). His request for a certificate of appealability was denied by the Ninth Circuit on October 10,  
14 2003. (Case No. CV 00-2642, ECF No. 39). As detailed in the Order dismissing case number CV  
15 17-5679 as successive, petitioner also previously filed habeas petitions in this Court in case numbers  
16 CV 03-9313-PA (CW) (“CV 03-9313”), and CV 07-8017-ABC (CW) (“CV 07-8017”), also challenging  
17 his October 27, 1997, conviction. Both of those petitions were also dismissed as successive. (Case  
18 Nos. CV 03-9313, ECF No. 5; CV 07-8017, ECF No. 6).

19 As was the case with the 1st 2017 Petition, the 2d 2017 Petition also references an application  
20 to file a second or successive habeas corpus petition filed by petitioner on May 2, 2017, in the Ninth  
21 Circuit Court of Appeals. (2d 2017 Pet. at 8). That application is still pending in the Ninth Circuit, in  
22 case number 17-71266. (Id.; Ninth Circuit website for case number 17-71266).

## 23 24 II.

### 25 DISCUSSION

26 A federal habeas petition is successive if it raises claims that were or could have been  
27 adjudicated on the merits in a previous petition. Cooper v. Calderon, 274 F.3d 1270, 1273 (9th Cir.  
28 2001) (per curiam). The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) provides

1 that a claim presented in a second or successive federal habeas petition that was not presented in  
2 a prior petition shall be dismissed unless:

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

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

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

9 28 U.S.C. § 2244(b)(2)(A), (B).

10 Furthermore, “[b]efore a second or successive application permitted by this section is filed in  
11 the district court, the applicant shall move in the appropriate court of appeals for an order authorizing  
12 the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

13 In his 2000 Petition, petitioner claimed that he received ineffective assistance of counsel when  
14 his trial counsel elicited self-incriminating admissions during petitioner’s trial testimony as to his prior  
15 felony convictions. (CV 00-2642, ECF No. 23 at 8). As mentioned above, on April 17, 2003, that  
16 action was dismissed on the merits and with prejudice. (Case No. CV 00-2642, ECF No. 30).

17 In the 2d 2017 Petition, petitioner again claims that he received ineffective assistance of  
18 counsel, and brings claims of prosecutorial misconduct, due process violations, improper jury  
19 instruction, and improper denial of his motion for new counsel pursuant to People v. Marsden, 2 Cal.  
20 3d 118 (1970). (2d 2017 Pet. at 5). Petitioner does not contend that his claims rely on a new rule  
21 of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was  
22 previously unavailable; and, it appears to the Court that although petitioner appears to be seeking  
23 to present new claims in the 2d 2017 Petition, the factual predicate for those claims could have  
24 previously been discovered through the exercise of due diligence, or they involved issues that arose  
25 during trial. Thus, the 2d 2017 Petition is successive.<sup>2</sup> Moreover, even if the instant claims satisfied

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27 <sup>2</sup> The 2d 2017 Petition is subject to the AEDPA’s one-year statute of limitations period, as  
28 set forth under 28 U.S.C. § 2244(d). See Calderon v. U.S. Dist. Ct. (Beeler), 128 F.3d 1283, 1286  
(continued...)

1 any of the exceptions found in 28 U.S.C. § 2244(b)(2)(A) or § 2244(b)(2)(B) that would allow for a  
2 successive petition (and it does not appear that petitioner has satisfied any of those provisions),  
3 petitioner nevertheless is required to seek and *obtain* authorization from the Ninth Circuit before  
4 filing a successive petition. 28 U.S.C. § 2244(b)(3)(A); Burton v. Stewart, 549 U.S. 147, 152-53,  
5 127 S. Ct. 793, 166 L. Ed. 2d 628 (2007) (AEDPA requires petitioner to receive authorization from  
6 the Court of Appeals before filing a second habeas petition). Although he has filed an application  
7 in the Ninth Circuit, petitioner has not *obtained* such permission from the Ninth Circuit. It therefore  
8 appears, as was the case with the 1st 2017 Petition, that the Court is without jurisdiction to entertain  
9 the 2d 2017 Petition under 28 U.S.C. § 2244(b). See Burton, 549 U.S. at 153; Cooper, 274 F.3d at  
10 1274 (“When the AEDPA is in play, the district court may not, in the absence of proper authorization  
11 from the court of appeals, consider a second or successive habeas application.”).

12  
13 **III.**

14 **CONCLUSION**

15 IT IS THEREFORE ORDERED that this action is **dismissed without prejudice** as  
16 successive.<sup>3</sup>

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19 DATED: September 12, 2017

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HONORABLE R. GARY KLAUSNER  
UNITED STATES DISTRICT JUDGE

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22 <sup>2</sup>(...continued)  
23 (9th Cir. 1997). In most cases, the limitation period begins to run from “the date on which the  
24 judgment became final by conclusion of direct review or the expiration of the time for seeking such  
25 review.” 28 U.S.C. § 2244(d)(1)(A). Petitioner filed the 2d 2017 Petition on September 5, 2017.  
(ECF No. 1). On its face, therefore, the 2d 2017 Petition, filed almost twenty years after his  
26 conviction, is also barred by the statute of limitations.

27 <sup>3</sup> If petitioner *obtains* permission from the Ninth Circuit Court of Appeals to file a successive  
28 petition, he should file a new petition for writ of habeas corpus. He should not file an amended  
petition in this action or use the case number from this action because the instant action is being  
closed today. If petitioner files a new petition, the Court will give that petition a new case number.