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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THOMAS FLOYD BRISSETTE, SR.,	)	CASE NO. CV 17-7964-JGB (PJW)
	)	
Petitioner,	)	ORDER DISMISSING HABEAS CORPUS
	)	PETITION AND DENYING CERTIFICATE
v.	)	OF APPEALABILITY
	)	
DEBBIE ASUNCION, WARDEN,	)	
	)	
Respondent.	)	
_____	)	

16 Before the Court is a Petition for Writ of Habeas Corpus under 28  
17 U.S.C. § 2254, in which Petitioner raises two claims: (1) his 1985  
18 conviction in Los Angeles County Superior Court for second degree  
19 murder was the result of a guilty plea that Petitioner wanted to  
20 withdraw but was prevented from withdrawing; and (2) his recently-  
21 obtained rap sheet indicates that Petitioner has been held in custody  
22 under a parole violation since 2000, contrary to the terms of his plea  
23 agreement. (Petition at 3-4 and attached pages.) For the following  
24 reasons, the Petition is dismissed without prejudice.

25 The Court has a duty to screen habeas corpus petitions before  
26 ordering service on a respondent. See *Mayle v. Felix*, 545 U.S. 644,  
27 656 (2005). In doing so, if it plainly appears from the face of a  
28 petition that a petitioner is not entitled to relief, the Court can

1 dismiss the petition at the outset. See Rule 4, Rules Governing  
2 § 2254 Cases.

3 Petitioner's first claim, challenging his plea agreement, is  
4 barred as an unauthorized second or successive claim. In January  
5 2003, this court dismissed as untimely a petition filed by Petitioner  
6 challenging the propriety of his 1985 plea agreement. (*Brissette v.*  
7 *McGrath*, CV 01-6682-GLT (PJW), January 17, 2003 Order Accepting Report  
8 and Recommendation of United States Magistrate Judge.) Petitioner  
9 attempted to appeal that ruling, but his application for a certificate  
10 of appealability was denied. (*Brissette v. McGrath*, CCA No. 03-55624,  
11 June 20, 2003 Order.)

12 A petition that is dismissed for untimeliness "presents a  
13 'permanent and incurable' bar to federal review of the underlying  
14 claims" and renders a subsequent petition second or successive.  
15 *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Absent an order  
16 from the Ninth Circuit, Petitioner may not bring another petition  
17 challenging his 1985 conviction and sentence in this court. See 28  
18 U.S.C. § 2244(b)(1),(3)(A).

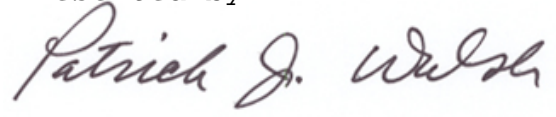
19 As for Petitioner's second claim, it appears to be unexhausted.  
20 As a matter of comity between state and federal courts, a federal  
21 court will generally not address the merits of a habeas corpus  
22 petition unless a petitioner has first exhausted his state remedies by  
23 presenting his claims to the highest court of the state. 28 U.S.C.  
24 § 2254(b); *Rose v. Lundy*, 455 U.S. 509, 522 (1982); see also *Cooper v.*  
25 *Neven*, 641 F.3d 322, 326 (9th Cir. 2011). Petitioner filed a habeas  
26 petition in the California Court of Appeal, which was denied on June  
27 29, 2017 (Case No. B282983). A review of the California appellate  
28 court website, at [appellatecases.courtinfo.ca.gov](http://appellatecases.courtinfo.ca.gov), reveals, however,

1 that Petitioner has not filed a petition in the California Supreme  
2 Court since December 2010 (Case No. S189235), which means he has never  
3 presented the instant claim to the state supreme court. Furthermore,  
4 because Petitioner's plea bargain claim is barred as second or  
5 successive, the Petition as a whole is unexhausted and subject to  
6 dismissal. See *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir.  
7 2006) ("Once a district court determines that a habeas petition  
8 contains only unexhausted claims, it need not inquire further as to  
9 the petitioner's intentions. Instead, it may simply dismiss the  
10 habeas petition for failure to exhaust.").

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

16 IT IS SO ORDERED  
17 DATED: November 21, 2017.

18   
19 \_\_\_\_\_  
20 JESUS G. BERNAL  
21 UNITED STATES DISTRICT JUDGE

22 Presented by:  
23   
24 \_\_\_\_\_  
25 PATRICK J. WALSH  
26 UNITED STATES MAGISTRATE JUDGE