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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DAMON EDWARD SWANIGAN,  
Petitioner,  
v.  
WARDEN, Salinas Valley State  
Prison,  
Respondent.

NO. CV 18-1854-RGK (AGR)  
  
OPINION AND ORDER ON  
PETITION FOR WRIT OF  
HABEAS CORPUS

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On March 6, 2018, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) pursuant to 28 U.S.C. § 2254. Petitioner challenges his 1998 conviction and sentence in Los Angeles County Superior Court. (Petition at 2.)

I.

**PROCEDURAL BACKGROUND**

Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records in Petitioner’s several prior federal habeas corpus actions in this district:

1 *Swanigan v. Pliler*, CV 01-2485 RSWL (SGL) (“*Swanigan I*”)<sup>1</sup>; *Swanigan v. Pliler*,  
2 CV 02-2355 RSWL (SGL) (“*Swanigan II*”);<sup>2</sup> *Swanigan v. Pliler*, CV 02-6784 ABC  
3 (SGL) (“*Swanigan III*”), *Swanigan v. Small*, CV 08-4954-RSWL (AGR) (“*Swanigan*  
4 *IV*”), and *Swanigan v. Biter*, CV 14-7055-RGK (AGR) (“*Swanigan V*”).

5 On August 29, 2002, in *Swanigan III*, Petitioner filed a petition for writ of  
6 habeas corpus by a person in state custody. *Id.*, Dkt. No. 1. Petitioner  
7 challenged his 1998 conviction for two counts of robbery with enhancements.  
8 (*Id.*, Dkt. No. 10 at 1.)

9 On November 20, 2002, the Court entered Judgment denying the petition  
10 in *Swanigan III* and dismissing the action with prejudice as barred by the one-  
11 year statute of limitations. *Id.*, Dkt. Nos. 10-11. On December 19, 2002,  
12 Petitioner filed a Notice of Appeal. *Id.*, Dkt. No. 12. On July 30, 2003, the Ninth  
13 Circuit denied Petitioner’s request for a certificate of appealability. *Id.*, Dkt. No.  
14 21.

15 On August 6, 2008, in *Swanigan IV*, the Court summarily dismissed the  
16 petition for lack of subject matter jurisdiction because it was a second or  
17 successive petition. (*Id.*, Dkt. No. 3.) Petitioner did not appeal.

18 On September 18, 2014, in *Swanigan V*, the Court again summarily  
19 dismissed the petition for lack of subject matter jurisdiction because it was a  
20 second or successive petition. (*Id.*, Dkt. No. 3.) On November 4, 2014, the Court  
21 denied Petitioner’s motion for reconsideration. (*Id.*, Dkt. No. 7.) Petitioner did not  
22 appeal.

23 The Court takes judicial notice of Ninth Circuit public records indicating  
24 that, on August 18, 2016 in case number 16-71167, the Court of Appeals denied  
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26 <sup>1</sup> On April 6, 2001, the Court dismissed *Swanigan I* without prejudice  
27 pursuant to Swanigan’s motion for voluntary dismissal so he could exhaust his  
28 grounds for relief.

<sup>2</sup> On May 31, 2002, the Court dismissed *Swanigan II* without prejudice.

1 Petitioner’s application for authorization to file a second or successive habeas  
2 corpus petition.

3 The Petition for Writ of Habeas Corpus filed on March 6, 2018 in this Court  
4 contains enumerates the following claims and arguments: (1) Petitioner is  
5 “actually innocent” of the “Third Strike” sentence imposed in 1998; (2) in “prior  
6 writ proceedings, the [state] court ignored a subject matter jurisdiction” in violation  
7 of Petitioner’s federal due process rights; (3) the trial court failed to follow state  
8 procedural law in imposing Petitioner’s “Third Strike” sentence; (4) Petitioner  
9 received ineffective assistance of counsel at the portion of his trial devoted to the  
10 existence of his prior “strikes”; and (5) Petitioner has exhausted his claims in the  
11 state courts. (Petition at 5-6.)

12 In a Memorandum of Law filed with the Petition, Petitioner contends that  
13 his actual innocence exempts him from the one-year statute of limitations under  
14 28 U.S.C. § 2244(b)(2)(B)(ii). (Dkt. No. 4 at 2, 7-8.)

## 15 II.

### 16 DISCUSSION

17 The Petition was filed after enactment of the Antiterrorism and Effective  
18 Death Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA  
19 in reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059,  
20 138 L. Ed. 2d 481 (1997).

21 The AEDPA provides, in pertinent part: “Before a second or successive  
22 application permitted by this section is filed in the district court, the applicant shall  
23 move in the appropriate court of appeals for an order authorizing the district court  
24 to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not  
25 have jurisdiction to consider a “second or successive” petition absent  
26 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152 (2007);  
27 *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (“When the AEDPA is in  
28 play, the district court may not, in the absence of proper authorization from the

1 court of appeals, consider a second or successive habeas application.”) (citation  
2 and quotation marks omitted).

3 Here, the Petition is a successive petition that challenges the same custody  
4 imposed by the same judgment of the state court as in *Swanigan III*. (Petition at  
5 2.) As noted above, Petitioner has not received authorization from the Ninth  
6 Circuit Court of Appeals to file the Petition. This Court must, therefore, dismiss  
7 the Petition as a second or successive petition for which it lacks jurisdiction under  
8 28 U.S.C. § 2244(b)(3). See *Burton*, 549 U.S. at 153-56.

9 Petitioner’s reference to his actual innocence does not alter the analysis.  
10 See *Williams v. Thaler*, 602 F.3d 291, 304-05 (5th Cir. 2010) (because petitioner  
11 failed to obtain Court of Appeals’ authorization for leave to file successive  
12 petition, “district court did not have jurisdiction to consider [petitioner]’s claim of  
13 actual innocence”).

14 Rule 4 of the Rules Governing Section 2254 Cases in the United States  
15 Courts provides that “[i]f it plainly appears from the face of the petition and any  
16 attached exhibits that the petitioner is not entitled to relief in the district court, the  
17 judge must dismiss the petition and direct the clerk to notify the petitioner.” Here,  
18 summary dismissal is warranted.

19 **III.**

20 **ORDER**

21 IT IS HEREBY ORDERED that Judgment be entered summarily dismissing  
22 the Petition and action for lack of subject matter jurisdiction.

23  
24 DATED: March 12, 2018

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R. GARY KLAUSNER  
United States District Judge