

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRISTOPHER A. REINOSO,

Petitioner,

v.

ROBERT NEUSCHMID, Warden,

Respondent.

NO. CV 19-05304-SVW (AGR)

OPINION AND ORDER ON
SECOND OR SUCCESSIVE
PETITION

Because Petitioner previously challenged the same underlying state-court judgment in a prior habeas action that the Court dismissed with prejudice, and because Petitioner lacks Ninth Circuit authorization to file a second or successive habeas petition, the Court lacks jurisdiction over the Petition for Writ of Habeas Corpus.

1 I.

2 **PROCEDURAL BACKGROUND**

3 Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records
4 in Petitioner’s prior federal habeas corpus action in the Central District of
5 California.

6 On April 8, 2010, a Los Angeles County Superior Court jury convicted
7 Petitioner of second degree murder. (*Reinoso I*, Lodged Document (“LD”) 7 at
8 169.)¹ On May 3, 2010, Petitioner was sentenced to 15 years to life to run
9 consecutively to the sentence imposed on other counts in the first trial.² (*Id.*, LD 7
10 at 182; Case No. BA260255.)

11 On November 3, 2011, the California Court of Appeal affirmed the
12 judgment. (*Id.*, LD 2; Case No. B225326.) On January 11, 2012, the California
13 Supreme Court denied review. (*Id.*, LD 4; Case No. S198305.) On November
14 13, 2013, the California Supreme Court summarily denied Petitioner’s state
15 habeas petition. (*Id.*, LD 6; Case No. S212792.)

16 On March 7, 2013, Petitioner filed a Petition for Writ of Habeas Corpus by a
17 Person in State Custody (“Petition”) before this court in *Reinoso v. Spearman*, CV
18 No. 13-01627-SVW (AGR) (C.D. Cal. Jan. 4, 2016) (“*Reinoso I*”). Petitioner
19 raised three grounds for relief: (1) the trial court erred by not allowing him to
20 present a defense of diminished capacity; (2) ineffective assistance of trial
21

22 ¹ Information from this section obtained from the magistrate judge’s Report
23 and Recommendation in *Reinoso v. Spearman*, CV No. 13-01627-SVW (AGR)
(C.D. Cal. Jan. 4, 2016). (Dkt. No. 33 at 2.)

24 ² The second degree murder conviction at issue occurred on retrial.
25 Previously, Petitioner pled no contest to charges of grand theft auto and
26 unlawfully taking or driving a vehicle. A jury convicted him of second degree
27 murder, driving under the influence causing injury and with a blood alcohol level
28 in excess of .08 percent, misdemeanor hit and run driving, and driving with a
suspended license. The California Court of Appeal reversed the murder
conviction due to error in excluding expert psychological testimony on Petitioner’s
mental defects. In all other respects, the judgment was affirmed. (LD 2 at 2 n.1.)

1 counsel based on failure to prepare expert witness; and (3) prosecutorial
2 misconduct based on improper emotional appeal during closing arguments.
3 (*Reinoso I*, Dkt. No. 1 at 4-5.) Respondent filed an answer. (*Id.*, Dkt. No. 30.)
4 Petitioner did not file a traverse.

5 On February 11, 2015, the magistrate judge issued a Report and
6 Recommendation (“Report”) finding that Petitioner was not entitled to relief on
7 any of the grounds raised and recommended that judgment be entered denying
8 the Petition and dismissing the action with prejudice. (*Id.*, Dkt. No. 33 at 16.)

9 On January 4, 2016, the district court entered an order accepting the
10 Report and entered judgment denying the Petition and dismissing the action with
11 prejudice. (*Id.*, Dkt. Nos. 36-37.) On that same day, the district court entered an
12 order denying Petitioner’s request for a Certificate of Appealability. (*Id.*, Dkt. No.
13 38.)

14 On August 15, 2018, Petitioner filed a habeas petition in the California
15 Supreme Court, which subsequently denied the petition on January 23, 2019.
16 (Case No. S250625.)³

17 On June 12, 2019, Petitioner filed the instant Petition before this court in
18 *Reinoso v. Neuschmid*, CV No. 19-05304-SVW (AGR) (C.D. Cal. June 12, 2019)
19 (“*Reinoso II*”). Petitioner raised two grounds for relief: (1) the underlying felony of
20 driving under the influence merged with the homicide and the trial court failed to
21 properly instruct the jury; and (2) California’s Second Degree Murder statute
22 pursuant to Cal. Penal Code Section 189 is unconstitutional under *Johnson v.*
23 *United States*, 135 S.Ct. 2551 (2015). (*Reinoso II*, Dkt. No. 1 at 9-18.)

24
25 ³ Case information accessible on California Appellate Courts Case
26 Information website at:
27 [https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0
28 &doc_id=2260135&doc_no=S250625&request_token=NilwLSIkTkw5W1AtSCNN
UEIIUFg0UDxTJiJeXzhSICAgCg%3D%3D](https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2260135&doc_no=S250625&request_token=NilwLSIkTkw5W1AtSCNNUEIIUFg0UDxTJiJeXzhSICAgCg%3D%3D).

1 The Court takes judicial notice of the Ninth Circuit’s public records database
2 indicating that Petitioner has not received authorization from the Ninth Circuit to
3 file a second or successive Petition in this court.

4 II.

5 **DISCUSSION**

6 The Petition was filed after enactment of the Antiterrorism and Effective
7 Death Penalty Act of 1996 (“AEDPA”). Therefore, the Court applies the AEDPA
8 in reviewing the Petition. *Lindh v. Murphy*, 521 U.S. 320, 336 (1997).

9 The AEDPA provides, in pertinent part: “Before a second or successive
10 application permitted by this section is filed in the district court, the applicant shall
11 move in the appropriate court of appeals for an order authorizing the district court
12 to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A district court does not
13 have jurisdiction to consider a “second or successive” Petition absent
14 authorization from the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 152 (2007).

15 The instant Petition is second or successive because it attacks the
16 underlying conviction and sentence that Petitioner previously challenged in
17 *Reinoso I*. On March 7, 2013, Petitioner filed a Petition in *Reinoso I* and raised
18 the following three grounds for relief: (1) the 2005 trial court erred by not allowing
19 Petitioner to present a defense of diminished capacity; (2) ineffective assistance
20 of defense counsel based on failure to prepare expert witness during the retrial;
21 and (3) prosecutorial misconduct on retrial. (*Reinoso I*, Dkt. No. 1 at 4-5.) On
22 January 4, 2016, the district court entered an order accepting the Report and
23 entered judgment denying the Petition and dismissing the action with prejudice.
24 (*Id.*, Dkt. Nos. 36-37.) On that same day, the district court entered an order
25 denying Petitioner’s request for a Certificate of Appealability. (*Id.*, Dkt. No. 38.)

26 The instant Petition in *Reinoso II* challenges the same underlying judgment
27 and robbery conviction. Petitioner raised two grounds for relief in the instant
28

1 Petition: (1) the felony conviction of driving under the influence from 2005 should
2 have merged with the homicide conviction from 2010; and (2) California's Second
3 Degree Murder statute pursuant to Cal. Penal Code Section 189 is
4 unconstitutionally vague under *Johnson v. United States*, 135 S.Ct. 2551 (2015).
5 (*Reinoso II*, Dkt. No. 1 at 9-18.)

6 A Petition is second or successive "if the facts underlying the claim
7 occurred by the time of the initial petition" and "if the petition challenges the same
8 state court judgment as the initial petition." *Brown v. Muniz*, 889 F.3d 661, 667
9 (9th Cir. 2018), *cert. denied*, *Brown v. Hatton*, 139 S.Ct. 841 (2019) (citing *Panetti*
10 *v. Quarterman*, 551 U.S. 930, 945 (2007); *Magwood v. Patterson*, 561 U.S. 320,
11 332 (2010)). Thus, the Petition is second or successive.

12 A review of the Ninth Circuit's online database indicates that Petitioner has
13 not received authorization from the Ninth Circuit Court of Appeals to file a second
14 or successive Petition. See *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir.
15 2001) ("When the AEDPA is in play, the district court may not, in the absence of
16 proper authorization from the court of appeals, consider a second or successive
17 habeas application.") (citation and quotation marks omitted). Rule 9 of the Rules
18 Governing Section 2254 Cases in the United States Courts provides that "[b]efore
19 presenting a second or successive petition, the petitioner must obtain an order
20 from the appropriate court of appeals authorizing the district court to consider the
21 petition as required by 28 U.S.C. § 2244(b)(3) and (4)." The Court therefore
22 dismisses the Petition as a second or successive Petition for which it lacks
23 jurisdiction. The Clerk will be directed to send Petitioner a copy of Ninth Circuit
24 Form 12 so that he can provide the necessary information to the Circuit for such
25 an application.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.
ORDER

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

DATED: July 10, 2019



STEPHEN V. WILSON
United States District Judge