

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

RAMUNDIE O BROWN,

Petitioner,

v.

BRIAN DUFFY, Warden,

Respondent.

NO. CV 21-1423-JAK (AGR)

OPINION AND ORDER ON
PETITION FOR WRIT OF
HABEAS CORPUS

Because Petitioner previously challenged the same underlying state criminal conviction 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.

I.

PROCEDURAL HISTORY

Pursuant to Fed. R. Evid. 201, the Court takes judicial notice of the records in Petitioner's prior federal habeas corpus action in the Central District of California in *Brown v. Duffy*, Case No. CV 14-1750-JAK (JCG) (C.D. Cal.) ("*Brown I*").

1 On March 10, 2014, Petitioner filed a Petition for Writ of Habeas Corpus by
2 a Person in State Custody pursuant to 28 U.S.C. § 2254 in *Brown I* and
3 challenged his state conviction for attempted murder and assault with a deadly
4 weapon. The Report and Recommendation (“Report”) recommended that
5 judgment be entered denying the petition and dismissing the action with
6 prejudice. (*Brown I*, Dkt. No. 18.) On August 10, 2015, the Court entered an
7 order accepting the Report, entered judgment denying the Petition and dismissing
8 the action with prejudice, and also denied a Certificate of Appealability. (*Id.*, Dkt.
9 Nos. 21-22.)

10 Petitioner has now filed a second Petition for Writ of Habeas Corpus by a
11 Person in State Custody (“Petition”) pursuant to 28 U.S.C. § 2254. *Perry v. Duffy*,
12 Case No. CV 21-1423 JAK (AGR) (“*Brown II*”).¹ (Dkt. No. 1.)² Petitioner again
13 challenges the same state court conviction that he previously challenged in
14 *Brown I*. The Petition raises a single ground for relief, which corresponds to
15 Ground Four in the petition filed in *Brown I*. (*Compare Brown II*, Dkt. No. 1 at 5-7
16 with *Brown I*, Dkt. No. 1 at 6, Dkt. No. 1-1 at 8-9.)

17 II.

18 DISCUSSION

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

22 “Before a second or successive application permitted by this section is filed
23 in the district court, the applicant shall move in the appropriate court of appeals
24

25 ¹ Page citations are to the page numbers assigned by CM/ECF in the
26 header of the document.

27 ² The Court received and filed the Petition on February 10, 2021. The
28 postmark indicates it was mailed on February 8, 2021. However, Petitioner has
dated the Petition on December 2, 2019. (Dkt. No. 1 at 10.)

1 for an order authorizing the district court to consider the application.” 28 U.S.C. §
2 2244(b)(3)(A). A district court does not have jurisdiction to consider a “second or
3 successive” petition absent authorization from the Ninth Circuit. *Burton v.*
4 *Stewart*, 549 U.S. 147, 152 (2007).

5 The current Petition is second or successive because Petitioner again
6 challenges the same state court conviction and sentence that he previously
7 challenged in *Brown I*. A petition is second or successive “if the facts underlying
8 the claim occurred by the time of the initial petition” and “if the petition challenges
9 the same state court judgment as the initial petition.” *Brown v. Muniz*, 889 F.3d
10 661, 667 (9th Cir. 2018), *cert. denied Brown v. Hatton*, 139 S. Ct. 841 (2019); *see*
11 *also Magwood v. Patterson*, 561 U.S. 320, 332 (2010). Thus, the underlying
12 Petition is second or successive.

13 The Petition does not state that Petitioner requested or received
14 authorization from the Ninth Circuit to file a second or successive petition. A
15 review of the Ninth Circuit’s online database indicates Petitioner did not request
16 or receive authorization to file a second or successive petition. *See Cooper v.*
17 *Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (“When the AEDPA is in play, the
18 district court may not, in the absence of proper authorization from the court of
19 appeals, consider a second or successive habeas application.”) (citation and
20 quotation marks omitted).

21 Rule 4 of the Rules Governing Section 2254 Cases in the United States
22 Courts provides that “[i]f it plainly appears from the face of the petition and any
23 attached exhibits that the petitioner is not entitled to relief in the district court, the
24 judge must dismiss the petition and direct the clerk to notify the petitioner.” The
25 Court therefore dismisses the Petition as a second or successive Petition for
26 which it lacks jurisdiction.

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: February 23, 2021



JOHN A. KRONSTADT
United States District Judge