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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRUCE ALLEN,
Petitioner,
v.
PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

Case No. CV 21-02759 AB (RAO)

ORDER SUMMARILY
DISMISSING SUCCESSIVE
PETITION FOR WRIT OF HABEAS
CORPUS FOR LACK OF
JURISDICTION AND DENYING
CERTIFICATE OF
APPEALABILITY

I. BACKGROUND

On March 22, 2021, Petitioner Bruce Allen constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) pursuant to 28 U.S.C. § 2254. Petitioner seeks habeas relief from his current state custody arising from his 1983 conviction and resulting sentence of life without the possibility of parole in Los Angeles County Superior Court, case number LAA023609. Petition at 11 and Exh. C.

The records of this Court establish that Petitioner has filed two prior habeas actions concerning his 1983 conviction and sentence. *See Allen v. Kernan*, No. CV 16-4803-AB (RAO) (C.D. Cal. June 30, 2016); *Allen v. Kernan*, No. CV 18-5848-AB (RAO) (C.D. Cal. July 3, 2018). In the 2016 action, the Court denied on the

1 merits Petitioner’s claim that California Senate Bill 261, codified at California Penal
2 Code § 3051, unconstitutionally violates his Fourteenth Amendment right to equal
3 protection by excluding him from eligibility for a youth-offender parole hearing
4 based on his prison sentence of life without the possibility of parole. *See* October 5,
5 2016 Report and Recommendation, Dkt. No. 13 at 5-10, *adopted by* November 9,
6 2016 Order, *Allen v. Kernan*, No. CV 16-4803-AB (RAO), Dkt. No. 15.¹

7 A review of the instant Petition demonstrates that Petitioner again seeks to
8 raise an equal protection claim that California Penal Code § 3051 unconstitutionally
9 excludes him from the state’s youthful-offender parole eligibility scheme. Petition
10 at 5, 9-13. Neither the Petition itself nor the records of the Ninth Circuit establish
11 that the Ninth Circuit has authorized Petitioner to bring a successive petition in this
12 Court.

13 II. DISCUSSION

14 The United States Supreme Court has explained:

15 The Antiterrorism and Effective Death Penalty Act of 1996
16 (AEDPA) established a stringent set of procedures that a
17 prisoner “in custody pursuant to the judgment of a State
18 court,” 28 U.S.C. § 2254(a), must follow if he wishes to file
19 a “second or successive” habeas corpus application
20 challenging that custody, § 2244(b)(1). In pertinent part,
21 before filing the application in the district court, a prisoner
22 “shall move in the appropriate court of appeals for an order
23 authorizing the district court to consider the application.”
24 § 2244(b)(3)(A). A three-judge panel of the court of
25 appeals may authorize the filing of the second or successive
26 application only if it presents a claim not previously raised
27 that satisfies one of the two grounds articulated in
28 § 2244(b)(2). § 2244(b)(3)(C); *Gonzalez v. Crosby*, 545
U.S. 524, 529-530, 125 S. Ct. 2641, 162 L. Ed. 2d 480

26 ¹ In the 2018 action, the Court denied as time-barred Petitioner’s challenge to the
27 1983 conviction and sentence. *See* July 17, 2018 Report and Recommendation, Dkt.
28 No. 7, *adopted by* August 29, 2018 Order, *Allen v. Kernan*, No. CV 18-5848-AB
(RAO), Dkt. No. 8.

1 (2005); see also *Felker v. Turpin*, 518 U.S. 651, 656-657,
2 664, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996).

3 *Burton v. Stewart*, 549 U.S. 147, 152-53, 127 S. Ct. 793, 166 L. Ed. 2d 628 (2007).

4 The Court finds that Petitioner’s present Petition is clearly a “second or
5 successive” habeas petition. Petitioner is not challenging a new or intervening
6 judgment, nor is he attempting to raise a claim or claims that could not have been
7 brought in an earlier petition; indeed, he raised the same claim in his 2016 action.
8 *C.f. Clayton v. Biter*, 868 F.3d 840, 843-45 (9th Cir. 2017); *Hill v. State of Alaska*,
9 297 F.3d 895, 898 (9th Cir. 2002). Moreover, the Petition and records of the Ninth
10 Circuit establish that Petitioner has not been granted authorization by the Ninth
11 Circuit to file a successive petition to raise his claims.

12 For these reasons, the Court finds that it lacks jurisdiction to consider the
13 Petition. Therefore, the reference to the Magistrate Judge is vacated and the Petition
14 is dismissed for lack of jurisdiction. See *Burton*, 549 U.S. at 152-53. The Clerk is
15 directed to enter judgment dismissing the Petition.

16 **III. CERTIFICATE OF APPEALABILITY**

17 Under AEDPA, a state prisoner seeking to appeal a district court’s final order
18 in a habeas corpus proceeding must obtain a Certificate of Appealability (“COA”)
19 from the district judge or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may
20 issue “only if the applicant has made a substantial showing of the denial of a
21 constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by
22 demonstrating that jurists of reason could disagree with the district court’s resolution
23 of his constitutional claims or that jurists could conclude the issues presented are
24 adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537
25 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

26 When the Court dismisses a petition on procedural grounds, it must issue a
27 COA if the petitioner shows: (1) “that jurists of reason would find it debatable
28 whether the petition states a valid claim of the denial of a constitutional right”; and

1 (2) “that jurists of reason would find it debatable whether the district court was
2 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct.
3 1595, 146 L. Ed. 2d 542 (2000).

4 Here, the Court is dismissing the Petition without prejudice because it is a
5 successive petition without proper authorization from the Ninth Circuit. Since the
6 Petition is patently a successive petition, Petitioner cannot make the requisite
7 showing that jurists of reason would find it debatable whether the district court was
8 correct in its procedural ruling.

9 **IV. ORDER**

10 Based on the foregoing, IT IS ORDERED THAT:

- 11 1. The Petition is **DISMISSED** without prejudice for lack of jurisdiction; and
12 2. A Certificate of Appealability is **DENIED**.

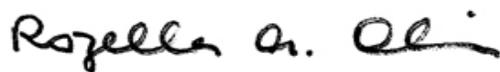
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14 DATED: April 28, 2021



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ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT JUDGE

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18 Presented by:



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ROZELLA A. OLIVER
21 UNITED STATES MAGISTRATE JUDGE
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