

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-WESTERN DIVISION

DAVID HAMILTON,)	Case No. CV 21-03446-DSF (AS)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
v.)	
)	
PEOPLE OF THE STATE OF)	
CALIFORNIA, et al.,)	
)	
Respondents.)	
_____)	

I. BACKGROUND

On April 20, 2021, David Hamilton ("Petitioner"), a California state prisoner proceeding pro se, filed a "Petition for Writ Error Coram Vobis to Escape the Limitations Laid Down in Rule 60(b)" (Dkt. No. 1), which the Court construes as a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to U.S.C. § 2254 ("Petition"). Petitioner challenges his 2010 convictions for mayhem and assault by means likely to produce

1 great bodily injury in Los Angeles County Superior Court (Case No.
2 BA339752), as well as his sentence of 46-years-to-life.¹ The
3 Petition alleges the following grounds for federal habeas relief:
4 (1) Petitioner is actually innocent; (2) Prior to his arraignment,
5 Petitioner was not administered warnings under Miranda v. Arizona,
6 384 U.S. 436 (1966); (3) The prosecutor failed to disclose
7 exculpatory evidence, in violation of Petitioner's right to due
8 process; and (4) The withdrawal of Petitioner's plea of not guilty
9 by reason of insanity was "not done so willingly"; and the trial
10 court's refusal to allow Petitioner to communicate with standby
11 counsel during trial proceedings was an abuse of discretion.
12 (Petition at 3-8).²

13
14 On November 4, 2014, Petitioner filed a Petition for Writ of
15 Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C.
16 § 2254, in which he challenged the same 2010 convictions and
17

18 ¹ The Court takes judicial notice of the pleadings in
19 David Hamilton v. William Knipp, Warden, Case No. CV 14-08537-DSF
20 (RZ) and David Hamilton v. People of the State of California, et
21 al., Case No. CV 17-08154-DSF (AS). On May 12, 2015, Case No. CV
14-08537-DSF (RZ) was transferred to the calendar of the
undersigned Magistrate Judge. See David Hamilton v. William
Knipp, Warden, Case No. CV 14-08537-DSF (RZ) (Dkt. No. 22).

22 ² To the extent that Petitioner is attempting to seek
23 relief from Judgment in Case No. CV 14-08537-DSF (RZ) and/or Case
24 No. CV 17-08154-DSF (AS) under Fed.R.Civ.P 60(b)(6), Petitioner
25 has failed to show extraordinary circumstances justifying the
26 reopening of a final judgment. See Gonzalez v. Crosby, 545 U.S.
27 524, 536 (2005); LaFarge Concrets et Etudes, S.A. v. Kaiser
28 Cement & Gypsum Corp., 791 F.2d 1334, 1338 (9th Cir. 1986)
(citations omitted); see also Lehman v. United States, 154 F.3d
1010, 1017 (9th Cir. 1998) ("To receive Rule 60(b)(6) relief, a
moving party must show both injury and that circumstances beyond
[his or her] control prevented timely action to protect [his or
her] interests.").

1 sentence ("prior habeas action"). See David Hamilton v. William
2 Knipp, Case No. CV 14-08537-DSF (RZ) (Dkt. No. 1). On June 15,
3 2015, the Court issued an Order and Judgment denying that habeas
4 petition and dismissing the action with prejudice (based on its
5 untimeliness), in accordance with the findings, conclusions and
6 recommendations of the assigned Magistrate Judge. (Id.; Dkt. Nos.
7 28-29). On the same date, the Court denied Petitioner a
8 certificate of appealability. (Id.; Dkt. No. 30). On February 16,
9 2016, the Ninth Circuit Court of Appeals denied Petitioner's
10 request for a certificate of appealability. (Id.; Dkt. No. 37).
11

12 On November 8, 2017, Petitioner filed what was construed as
13 a Petition for Writ of Habeas Corpus by a Person in State Custody
14 pursuant to 28 U.S.C. § 2254, challenging the same 2010
15 convictions and sentence. See David Hamilton v. People of the
16 State of California, et al., Case No. CV 17-08154-DSF (AS) (Dkt.
17 Nos. 1, 5 at 1). On November 27, 2017, the Court issued an Order
18 and Judgment dismissing that habeas petition without prejudice,
19 as an unauthorized, successive petition, and denied Petitioner a
20 Certificate of Appealability. (Id.; Dkt. Nos. 5-7).
21

22 II. DISCUSSION

23
24 The Antiterrorism and Effective Death Penalty Act of 1996
25 ("AEDPA"), enacted on April 24, 1996, provides in pertinent part
26 that:
27

28 (a) No circuit or district judge shall be

1 required to entertain an application for a writ of
2 habeas corpus to inquire into the detention of a
3 person pursuant to a judgment of a court of the
4 United States if it appears that the legality of such
5 detention has been determined by a judge or court of
6 the United States on a prior application for a writ
7 of habeas corpus, except as provided in §2255.

8 (b) (1) A claim presented in a second or
9 successive habeas corpus application under section
10 2254 that was presented in a prior application shall
11 be dismissed.

12 (2) A claim presented in a second or successive
13 habeas corpus application under section 2254 that was
14 not presented in a prior application shall be
15 dismissed unless--

16 (A) the applicant shows that the claim relies on
17 a new rule of constitutional law, made retroactive to
18 cases on collateral review by the Supreme Court, that
19 was previously unavailable; or

20 (B) (i) the factual predicate for the claim could
21 not have been discovered previously through the
22 exercise of due diligence; and

23 (ii) the facts underlying the claim, if proven
24 and viewed in light of the evidence as a whole, would
25 be sufficient to establish by clear and convincing
26 evidence that, but for constitutional error, no
27 reasonable fact finder would have found the applicant
28 guilty of the underlying offense.

1 (3) (A) Before a second or successive application
2 permitted by this section is filed in the district
3 court, the applicant shall move in the appropriate
4 court of appeals for an order authorizing the
5 district court to consider the application.

6 (B) A motion in the court of appeals for an
7 order authorizing the district court to consider a
8 second or successive application shall be determined
9 by a three-judge panel of the court of appeals.

10 (C) The court of appeals may authorize the
11 filing of a second or successive application only if
12 it determines that the application makes a prima
13 facie showing that the application satisfies the
14 requirements of this subsection.

15 (D) The court of appeals shall grant or deny the
16 authorization to file a second or successive
17 application not later than 30 days after the filing
18 of the motion.

19 (E) The grant or denial of an authorization by
20 a court of appeals to file a second or successive
21 application shall not be appealable and shall not be
22 the subject of a Petition for Rehearing or for a Writ
23 of Certiorari.

24 (4) A district court shall dismiss any claim
25 presented in a second or successive application that
26 the court of appeals has authorized to be filed
27 unless the applicant shows that the claim satisfies
28 the requirements of this section. 28 U.S.C. § 2244.

1 28 U.S.C. § 2244(b) (3) "creates a 'gatekeeping' mechanism for
2 the consideration of second or successive applications in district
3 court. The prospective applicant must file in the court of
4 appeals a motion for leave to file a second or successive habeas
5 application in the district court. § 2244(b) (3) (A)." Felker v.
6 Turpin, 518 U.S. 651, 657(1996).

7
8 The instant Petition and the prior habeas action challenge
9 Petitioner's custody pursuant to the same 2010 judgment entered
10 by the Los Angeles County Superior Court. Accordingly, the
11 instant Petition, filed on April 20, 2021, well after the
12 effective date of the AEDPA, is a second or successive habeas
13 petition for purposes of 28 U.S.C. § 2244. Therefore, Petitioner
14 was required to obtain authorization from the Court of Appeals
15 before filing the present Petition. See 28 U.S.C. §2244(b) (3) (A).
16 No such authorization has been obtained in this case.

17
18 Moreover, the claims asserted in the instant Petition do not
19 appear to fall within the exceptions to the bar on second or
20 successive petitions because the asserted claims are not based on
21 newly discovered facts or a "a new rule of constitutional law,
22 made retroactive to cases on collateral review by the Supreme
23 Court, that was previously unavailable." Tyler v. Cain, 533 U.S.
24 656, 662 (2001); see also Johnson v. California, 2019 WL 4276636,
25 at n.3 (C.D. Cal. Sept. 10, 2019) ("[A] new state right afforded
26 by an amended state statute does not create a new federal
27 constitutional right and certainly is not the equivalent of a
28 federal constitutional right newly recognized by the United States

1 Supreme Court and made retroactively applicable to cases on
2 collateral review.”; quoting Trejo v. Sherman, 2016 WL 9075049,
3 at *2 (C.D. Cal. Oct. 24, 2016), report and recommendation
4 accepted, 2016 WL 8738143 (C.D. Cal. Nov. 18, 2016)). However,
5 this determination must be made by the United States Court of
6 Appeals upon a petitioner’s motion for an order authorizing the
7 district court to consider his second or successive petition. 28
8 U.S.C. § 2244(b); see Burton v. Stewart, 549 U.S. 147, 157 (2007)
9 (where the petitioner did not receive authorization from the Court
10 of Appeals before filing second or successive petition, “the
11 District Court was without jurisdiction to entertain [the
12 petition]”); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir. 2000)
13 (“[T]he prior-appellate-review mechanism set forth in § 2244(b)
14 requires the permission of the court of appeals before ‘a second
15 or successive habeas application under § 2254’ may be
16 commenced.”). Because Petitioner has not obtained authorization
17 from the Ninth Circuit Court of Appeals, this Court cannot
18 entertain the present Petition. See Burton v. Stewart, supra.

19
20 Moreover, even if Petitioner’s claim of actual innocence may
21 fall within the exception to the bar on second or successive
22 petitions because it is based on newly discovered evidence (see
23 Petition at 4-5), this determination must be made by the United
24 States Court of Appeals upon a petitioner’s motion for an order
25 authorizing the district court to consider his second or
26 successive petition. See McQuiggin v. Perkins, 569 U.S. 383, 386
27 (2013) (“We hold that actual innocence, if proved, serves as a
28 gateway through which a petitioner may pass whether the impediment

1 is a procedural bar, as it was in *Schlup* and *House*, or, as in this
2 case, expiration of the statute of limitations.”; Under the actual
3 innocence exception to the statute of limitations, a petitioner
4 must show that “in light of the new evidence, no juror, acting
5 reasonably, would have voted to find him guilty beyond a
6 reasonable doubt.”; citation omitted); House v. Bell, 547 U.S.
7 518, 538 (2006) (“A petitioner’s burden at the gateway stage is to
8 demonstrate that more likely than not, in light of the new
9 evidence, no reasonable juror would find him guilty beyond a
10 reasonable doubt-or, to remove the double negative, that more
11 likely than not any reasonable juror would have reasonable
12 doubt.”).

13
14 In any event, Petitioner has not even purported to make a
15 showing of actual innocence, supported by new reliable evidence.
16 See Schlup v. Delo, 513 U.S. 298, 324 (1995) (“To be credible, [a
17 claim of actual innocence] requires petitioner to support his
18 allegations of constitutional error with new reliable evidence--
19 whether it be exculpatory scientific evidence, trustworthy
20 eyewitness accounts, or critical physical evidence--that was not
21 presented at trial.”). Petitioner simply has not presented an
22 “exceptional case[] involving a compelling claim of actual
23 innocence.” House, 547 U.S. at 521; see Schlup, supra
24 (“[E]xperience has taught us that a substantial claim that
25 constitutional error has caused the conviction of an innocent
26 person is extremely rare.”); McQuiggin, 569 U.S. at 386 (“We
27 caution, however, that tenable actual-innocence gateway pleas are
28 rare”).

1 While it does not appear that the actual innocence exception
2 to filing a successive petition would apply here, this is a
3 determination that must be made by the Ninth Circuit Court of
4 Appeals.

5
6 **III. ORDER**

7
8 ACCORDINGLY, IT IS ORDERED that the Petition be dismissed
9 without prejudice.

10
11 LET JUDGMENT BE ENTERED ACCORDINGLY.

12
13 DATED: April 26, 2021

14 

15 _____
16 DALE S. FISCHER
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28