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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

MARKEITH A. CLINTON,  
Petitioner,  
v.  
JAMES HILL,<sup>1</sup>  
Respondent.

No. 2:24-cv-10391-SVW-BFM

**ORDER TO SHOW CAUSE  
WHY HABEAS PETITION  
SHOULD NOT BE DISMISSED**

**SUMMARY OF ORDER**

Petitioner Markeith A. Clinton filed a “Notice of Appeal” in this Court, purporting to appeal a judgment entered on August 24, 2024. Despite a slight date discrepancy, it appears the judgment Clinton intends to appeal is the August 21, 2024, order of the California Supreme Court denying Clinton’s petition for review. As best this Court can tell, that petition for review related

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<sup>1</sup> Petitioner named “The People” as the respondent in this action. The proper respondent is James Hill, the warden at Petitioner’s place of incarceration. *See* Rule 2(a), Rules Governing Section 2254 Cases in the United States District Courts; *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam) (explaining that a federal habeas petitioner’s immediate custodian is the only party that can produce “the body” of the petitioner).

1 to a California Court of Appeal decision finding no jurisdiction to review the trial  
2 court's denial of a motion to dismiss charges, because the motion was filed years  
3 after Clinton was sentenced. This Court has no authority to consider an "appeal"  
4 from the California Supreme Court's denial of a petition for review. Instead, the  
5 federal court only has limited authority, on habeas review, to consider whether  
6 the petitioner is in custody in violation of the Constitution or laws or treaties of  
7 the United States.

8 Even construing Clinton's filing liberally, and assuming he intended to  
9 raise the due process violation he presented in a motion to dismiss in the  
10 superior court, it appears his Petition is an improper second-or-successive  
11 habeas petition and that it is untimely, as his filing was not within one year of  
12 the entry of judgment in his case.

13 The Court therefore orders Clinton to explain why his Petition should not  
14 be dismissed. **If Clinton fails to timely respond to this order, the Court**  
15 **may recommend to the presiding District Judge that his Petition be**  
16 **dismissed with or without prejudice.**

## 17 18 **ORDER**

### 19 **A. Factual Background**

20 Clinton is a California state prisoner currently housed in the R.J.  
21 Donovan Correctional Facility in San Diego, California. (ECF 1 at 1.) He was  
22 convicted in the Los Angeles County Superior Court of injury to a cohabitant,  
23 burglary, criminal threats, and evading a police officer. (ECF 1 at 5.) He was  
24 sentenced on September 18, 2015, to an aggregate term of imprisonment of 35  
25 years to life plus 16 months. (ECF 1 at 5.) On appeal, the judgment was affirmed  
26 but his sentence was corrected to 25 years to life plus six years and four months.  
27 (ECF 1 at 5.)

1           On July 27, 2023, Clinton filed a motion to dismiss in the Los Angeles  
2 County Superior Court based on alleged violations of due process. Clinton  
3 claimed that the prosecution failed to disclose evidence of his own mental  
4 health, which could have been used to challenge his competency to stand trial.  
5 (ECF 1 at 5 (California Court of Appeal order describing filing).) The trial court  
6 denied the motion. (ECF 1 at 5.) Clinton appealed, and the California Court of  
7 Appeal dismissed the appeal. It concluded that the superior court lacked  
8 jurisdiction to act on Clinton’s motion to dismiss, because Clinton had already  
9 been sentenced. (ECF 1 at 6 (citing *People v. Clinton*, 243 Cal. App. 2d 284, 288  
10 (1966) (“[A]fter a sentence has been entered in the minutes of the court and the  
11 defendant has begun serving his sentence, the trial court is without jurisdiction  
12 to vacate or modify it.”)).) Clinton filed a petition for review in the California  
13 Supreme Court; that petition was summarily denied on August 21, 2024. (ECF  
14 1 at 2.)

15           Clinton next filed a “Notice of Appeal” in this Court. (ECF 1 at 1.) The  
16 body of the Notice states, in its entirety, “Notice is hereby given that Markeith  
17 A. Clinton, plaintiff in the above-entitled matter, appeals to the U.S. District  
18 Court for the Central District of California from the final judgment entered in  
19 this action on 8-24-24.” (ECF 11 at 1.) The Notice attaches the 2024 California  
20 Supreme Court and 2023 California Court of Appeal orders just described.

## 21 **B. Analysis**

22           Rule 4 of the Rules Governing Section 2254 Cases in the United States  
23 District Courts allows a district court to dismiss a petition if it “plainly appears  
24 from the petition and any attached exhibits that the petitioner is not entitled to  
25 relief in the district court . . . .” Rule 4 of the Rules Governing Section 2254  
26 Cases. It appears that this action is subject to dismissal under Rule 4 because  
27 it does not set forth a cognizable claim, because the Petition is an unauthorized  
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1 second-or-successive habeas petition, and because the Petition is not timely. The  
2 Court will discuss each of these in turn.

3 First, this Court has no authority to review or hear an appeal of the  
4 decision of the California Supreme Court. The only federal court that can review  
5 the decision of the California Supreme Court is the United States Supreme  
6 Court. *D.C. Ct. App. v. Feldman*, 460 U.S. 462, 486-87 (1983); *Rooker v. Fidelity*  
7 *Trust Co.*, 263 U.S. 413, 416 (1923). To the extent Clinton intends to “appeal”  
8 the California Supreme Court’s decision, then, this action should be dismissed  
9 for lack of jurisdiction, because this Court lacks authority to hear the case.

10 Under 28 U.S.C. § 2254, this Court does have authority to consider a  
11 habeas petition challenging a state court conviction. But even construing  
12 Clinton’s filing liberally, Clinton has not stated any claim that is cognizable on  
13 habeas review. The federal court may only grant federal habeas relief upon a  
14 showing that the petitioner is in custody in violation of the Constitution, laws,  
15 or treaties of the United States. *McGuire*, 502 U.S. at 68. Clinton has not filed  
16 a petition putting forward any claim for relief that would satisfy that test.

17 Construing Clinton’s filing *extremely* liberally, the decision of the  
18 California Court of Appeal states that Clinton argued to the trial court that his  
19 conviction was obtained in violation of due process. To the extent that Clinton’s  
20 filing could be read to present that claim to this Court for habeas review, it  
21 would appear to be barred, both because it is an unauthorized second-or-  
22 successive petition and because it is untimely.

23 First, habeas petitioners are generally required to present all challenges  
24 to a conviction in a single petition, rather than bringing claims one at a time.  
25 Only under limited circumstances can a person bring a “second or successive”  
26 habeas petition in federal court. 28 U.S.C. § 2244(b)(2). Moreover, if a petitioner  
27 believes he can satisfy the criteria to file a successive petition, he must first  
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1 apply in the court of appeals for authorization to file a second-or-successive  
2 petition here. 28 U.S.C. § 2244(b)(3)(A) (“Before a second or successive  
3 application permitted by this section is filed in the district court, the applicant  
4 shall move in the appropriate court of appeals for an order authorizing the  
5 district court to consider the application.”). Failure to obtain authorization from  
6 the court of appeals deprives this Court of jurisdiction and requires dismissal of  
7 the petition. *Brown v. Muniz*, 889 F.3d 661, 67 (9th Cir. 2018) (“If the petition  
8 is second or successive, then the district court lacks jurisdiction and must  
9 dismiss the petition unless and until the court of appeals grants an application  
10 to file it.”).

11 Here, Clinton filed a first § 2254 habeas petition relating to the instant  
12 conviction in 2018. *Clinton v. Paramo*, CV 18-6209-SVW (MRW), 2019 WL  
13 1751844 (C.D. Cal. Feb. 21, 2019). His petition was denied on its merits. *Id.* at  
14 \*1. The Petition now pending in this Court does not reflect that Clinton obtained  
15 authorization from the Ninth Circuit to file a second-or-successive petition, and  
16 a search of the Ninth Circuit’s docket does not reflect that he sought or obtained  
17 such authorization. As such, it appears that the Petition should be dismissed as  
18 a second-or-successive petition filed without the authorization required under §  
19 2244(b)(3)(A).

20 It also appears that the claims in the Petition (as liberally construed  
21 above) are untimely. The Antiterrorism and Effective Death Penalty Act  
22 (“AEDPA”) sets a one-year statute of limitations for the filing of a federal habeas  
23 petition challenging a state conviction. 28 U.S.C. § 2244(d)(1). The statute of  
24 limitations runs from the latest of several triggering dates—including, as  
25 relevant here, “the date on which the judgment became final by the conclusion  
26 of direct review or the expiration of the time for seeking such review.” 28 U.S.C.  
27 § 2244(d)(1)(A).

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1           Here, the California Court of Appeal affirmed Clinton’s convictions on  
2 December 21, 2016. *People v. Clinton*, No. B267193, 2016 WL 7388536, at \*1  
3 (Cal. Ct. App. Dec. 21, 2016). The California Supreme Court summarily denied  
4 his petition for review on March 1, 2017. *See* Cal. Sup. Ct. Docket, *Clinton v.*  
5 *Paramo*, 2:18-cv-6209-SVW-MRW, ECF 14-9 at 1 (C.D. Cal. Nov. 9, 2018).  
6 Clinton apparently did not file a petition for a writ of certiorari in the United  
7 States Supreme Court. Clinton’s conviction thus became final for purposes of §  
8 2244(d) on May 30, 2017—90 days after the California Supreme Court’s  
9 decision, when the time for him to file a petition for a writ of certiorari expired.  
10 *See Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The one-year statute of  
11 limitations began to run the following day. But Clinton did not file this Petition  
12 within a year of May 30, 2017; he filed seven years later, in December 2024. His  
13 Petition thus appears to be facially untimely.

14           For the above reasons, it appears the Petition must be dismissed. Before  
15 the Court recommends dismissal of the action on any of these grounds, however,  
16 the Court will give Clinton an opportunity to respond. Clinton is therefore  
17 **ORDERED** to show cause—to explain in writing—why the Court should not  
18 recommend dismissal of the Petition for failure to raise a cognizable claim, as  
19 untimely, and as an unauthorized second or successive petition. Clinton shall  
20 file his response **no later than February 6, 2025**.

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**Failure to file a timely response as ordered may result in the Court recommending that this case be dismissed without prejudice for failure to present a cognizable claim, as untimely, for failure to obtain Ninth Circuit authorization, and/or for failure to prosecute and to follow court orders.**

DATED: January 6, 2025



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BRIANNA FULLER MIRCHEFF  
UNITED STATES MAGISTRATE JUDGE