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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TYRRALL FARROW CANNON,)	Case No. EDCV 10-0904-RGK (JEM)
)	
Petitioner,)	
)	MEMORANDUM AND ORDER
v.)	DISMISSING SUCCESSIVE PETITION
)	FOR WRIT OF HABEAS CORPUS
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
_____)	

On June 16, 2010, Petitioner Tyrrall Farrow Cannon (“Petitioner”), a prisoner in state custody proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (“Petition”), in which he challenges his 2003 state court conviction and sentence in San Bernardino County Superior Court Case No. 026177. Petitioner has filed numerous petitions in this Court challenging this 2003 conviction and sentence. For the reasons set forth below, the Petition must be dismissed as an unauthorized successive habeas petition.

PROCEEDINGS

On March 19, 2003, in Case No. FWV 026177, a San Bernardino County jury convicted Petitioner of inflicting corporal injury on a spouse and assault. The court found true that Petitioner had two prior “strike” convictions within the meaning of California’s “Three Strikes Law. The Court sentenced Petitioner to a term of 25 years to life in prison.

1 (Petition at 2; Report and Recommendation in Case No. EDCV 04-1287-CJC (CT), filed
2 June 15, 2006 (“June 2006 R&R”) at 2-3.)

3 Petitioner appealed his conviction, which was affirmed by the California Court of
4 Appeal on June 16, 2004. (Petition at 5; June 2006 R&R at 3.)

5 Petitioner filed a petition for review in the California Supreme Court, which was
6 denied on August 25, 2004. (Petition at 5; June 2006 R&R at 3.)

7 On August 18, 2003, July 21, 2004, and October 7, 2004, Petitioner filed three
8 separate habeas petition in the California Supreme Court, which were denied on May 12,
9 2004, June 8, 2005, and September 7, 2005, respectively. (June 2006 R&R at 3-4.)

10 On October 12, 2004, in Case No. EDCV 04-1287-CJC (CT), Petitioner filed a
11 petition for writ of habeas corpus in the United States District Court for the Central District of
12 California, attacking the judgment in San Bernardino County Superior Court Case No. FWV
13 026177 (“2004 Federal Petition”).¹

14 On June 15, 2006, the Magistrate Judge filed a Report and Recommendation
15 recommending that the 2004 Federal Petition be denied on the merits and dismissed with
16 prejudice. On July 7, 2006, the District Judge issued an Order adopting the Report and
17 Recommendation and entered a Judgment denying the 2004 Federal Petition and
18 dismissing it with prejudice.

19 On June 16, 2010, Petitioner filed the instant Petition, which also attacks the
20 judgment in San Bernardino County Superior Court Case No. FWV 026177.

21 **DISCUSSION**

22 **I. Duty to Screen**

23 This Court has a duty to screen habeas corpus petitions. See Rules Governing §
24 2254 Cases in the United States District Courts, Rule 4 Advisory Committee Notes. Rule 4
25 requires a district court to examine a habeas corpus petition, and if it plainly appears from
26 the face of the petition and any annexed exhibits that the petitioner is not entitled to relief,

27
28 ¹ The Court takes judicial notice of its own files and records in the case Tyrrall
Farrow Cannon v. D. L. Ollison, Warden, Case No. EDCV 04-1287-CJC (CT).

1 the judge shall make an order for summary dismissal of the petition. Id.; see also Local
2 Rule 72-3.2.

3 **II. Successive Petitions**

4 The instant Petition must be dismissed as a successive petition over which this Court
5 lacks jurisdiction. The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”)
6 “greatly restricts the power of federal courts to award relief to state prisoners who file
7 second or successive habeas corpus applications.” Tyler v. Cain, 533 U.S. 656, 661 (2001).
8 AEDPA “creates a ‘gatekeeping’ mechanism for the consideration of second or successive
9 applications in district court.” Felker v. Turpin, 518 U.S. 651, 657 (1996); see also Stewart
10 v. Martinez-Villareal, 523 U.S. 637, 641 (1998). Second or successive habeas petitions are
11 subject to the “extremely stringent” requirements of AEDPA. Babbitt v. Woodford, 177 F.3d
12 744, 745 (9th Cir. 1999). “Before a second or successive application permitted by this
13 section is filed in the district court, the applicant shall move in the appropriate court of
14 appeals for an order authorizing the district court to consider the application.” 28 U.S.C. §
15 2244(b)(3)(A). Second or successive habeas petitions filed in the district court without an
16 authorizing order from the court of appeals shall be dismissed. See 28 U.S.C. § 2244(b);
17 see also Burton v. Stewart, 549 U.S. 147, 153 (2007) (where petitioner neither sought nor
18 received authorization from Court of Appeals before filing second or successive petition,
19 district court should have dismissed petition for lack of jurisdiction).
20 “When the AEDPA is in play, the district court may not, in the absence of proper
21 authorization from the court of appeals, consider a second or successive habeas
22 application.” Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (quoting Libby v.
23 Magnusson, 177 F.3d 43, 46 (1st Cir. 1999)).

24 The instant Petition challenges the same 2003 conviction and sentence that
25 Petitioner has challenged in numerous prior habeas petitions,² including his 2004 Federal

26
27 ² On numerous occasions, Petitioner has filed federal habeas petitions attacking his
28 2003 conviction and sentence in San Bernardino Superior Court Case No. FWV 026177,
which have been dismissed as unauthorized successive petitions under 28 U.S.C. §

1 Petition. The Court denied the 2004 Federal Petition on the merits and dismissed it with
2 prejudice.

3 Under AEDPA, Petitioner was required to obtain an order from the Ninth Circuit
4 authorizing the Court to consider these claims prior to filing the instant Petition. Because he
5 did not do so, this Court is without jurisdiction to entertain it. Burton, 549 U.S. at 153; see
6 also 28 U.S.C. § 2244(b)(3)(A).

7 **ORDER**

8 ACCORDINGLY, IT IS HEREBY ORDERED that the Petition be DISMISSED with
9 prejudice as an unauthorized successive petition.

10
11 DATED: June 23, 2010



12 _____
13 R. GARY KLAUSNER
14 UNITED STATES DISTRICT JUDGE

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28 2244(b). See, e.g., Case No. EDCV 09-0824; EDCV 08-0859; Case No. EDCV 08-0153;
Case No. EDCV 08-0019; Case No. EDCV 07-0579.