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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ERNEST ANTHONY GRAVES,)	NO. ED CV 17-2527-CAS(E)
)	
Petitioner,)	
)	
v.)	ORDER OF DISMISSAL
)	
JOSIE GASTELO, Warden,)	
)	
Respondent.)	
_____)	

On December 20, 2017, Petitioner filed a "Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody." The Petition challenges a 1996 Superior Court criminal judgment. Petitioner previously challenged this same Superior Court criminal judgment in a prior habeas corpus petition filed in this Court. See Graves v. Roe, CV 99-1492-AHM(E). On January 7, 2000, this Court entered Judgment in Graves v. Roe, CV 99-1492-AHM(E), denying and dismissing the prior petition on the merits with prejudice.

The Court must dismiss the present Petition in accordance with 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and

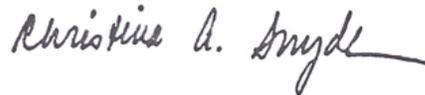
1 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
2 a petitioner seeking to file a "second or successive" habeas petition
3 first obtain authorization from the Court of Appeals. See Burton v.
4 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
5 authorization from Court of Appeals before filing second or successive
6 petition, "the District Court was without jurisdiction to entertain
7 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
8 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
9 requires the permission of the court of appeals before 'a second or
10 successive habeas application under § 2254' may be commenced"). A
11 petition need not be repetitive to be "second or successive," within
12 the meaning of 28 U.S.C. section 2244(b). See, e.g., Thompson v.
13 Calderon, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965
14 (1998); Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D. Cal.
15 Mar. 6, 2008). Petitioner evidently has not yet obtained
16 authorization from the Ninth Circuit Court of Appeals.¹ Consequently,
17 this Court cannot entertain the present Petition. See Burton v.
18 Stewart, 549 U.S. at 157; Remsen v. Att'y Gen. of Calif., 471 Fed.
19 App'x 571, 571 (9th Cir. 2012) (if a petitioner fails to obtain
20 authorization from the Court of Appeals to file a second or successive
21 petition, "the district court lacks jurisdiction to consider the
22 petition and should dismiss it.") (citation omitted).

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25 ¹ The Court takes judicial notice of the docket of the
26 United States Court of Appeals for the Ninth Circuit, available
27 on the PACER database. See Mir v. Little Company of Mary Hosp.,
28 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice
of court records). The Ninth Circuit's docket does not show that
any individual named Ernest Graves has obtained any order from
the Ninth Circuit permitting the filing of a second or successive
habeas petition in this Court.

1 For all of the foregoing reasons, the Petition is denied and
2 dismissed without prejudice.²

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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: January 8, 2018.

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CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

10
11 PRESENTED this 3rd day of
12 January, 2018, by:

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14

/s/
15 CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

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25 ² Ninth Circuit Rule 22-3(a) provides that "if a second
26 or successive petition . . . is mistakenly submitted to the
27 district court, the district court shall refer it to the court of
28 appeals." Assuming arguendo that the conflict between 28 U.S.C.
section 2244(b) and Rule 22-3(a) does not invalidate the latter,
dismissal rather than "reference" still would be appropriate
herein. It is apparent that Petitioner submitted the present
Petition to this Court intentionally rather than mistakenly.