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

ABIJAH WILLIAMS,)	Case No. EDCV 22-2012-MCS (JPR)
)	
Petitioner,)	
)	ORDER SUMMARILY DISMISSING
v.)	PETITION FOR WRIT OF HABEAS
)	CORPUS FOR LACK OF SUBJECT MATTER
T.L. CAMPBELL, Warden,)	JURISDICTION
)	
Respondent.)	
)	

On November 10, 2022, Petitioner filed a habeas petition by a person in state custody, challenging his 2006 conviction in Riverside County Superior Court for attempted murder and related crimes. (See Pet. at 2 (the Court uses the pagination generated by its Case Management/Electronic Case Filing system).) He claims that new evidence, the victim’s recantation, shows his actual innocence. (See id. at 14-16.)

This is not Petitioner’s first federal habeas petition, however. On April 16, 2013, the Court denied as time barred his habeas petition challenging the same judgment, in case number EDCV 11-1088-SVW (FFM). He apparently did not appeal, and nothing indicates that his state-court judgment has been modified

1 in any way since the prior habeas petition was denied. (See,
2 e.g., Pet. at 33 (indicating that in 2021, state court denied
3 habeas petition raising "same" claim as "this petition").)

4 The Antiterrorism and Effective Death Penalty Act provides:

5 (b) (1) A claim presented in a second or successive habeas
6 corpus application under section 2254 that was presented
7 in a prior application shall be dismissed.

8 (2) A claim presented in a second or successive habeas
9 corpus application under section 2254 that was not
10 presented in a prior application shall be dismissed
11 unless—

12 (A) the applicant shows that the claim relies on a
13 new rule of constitutional law, made retroactive to
14 cases on collateral review by the Supreme Court,
15 that was previously unavailable; or

16 (B) (i) the factual predicate for the claim could
17 not have been discovered previously through the
18 exercise of due diligence; and

19 (ii) the facts underlying the claim, if proven and
20 viewed in light of the evidence as a whole, would
21 be sufficient to establish by clear and convincing
22 evidence that, but for constitutional error, no
23 reasonable factfinder would have found the
24 applicant guilty of the underlying offense.

25 (3) (A) Before a second or successive application
26 permitted by this section is filed in the district court,
27 the applicant shall move in the appropriate court of
28


1 appeals for an order authorizing the district court to
2 consider the application.

3 28 U.S.C. § 2244(b).

4 A denial of a habeas petition as untimely acts as a decision
5 on the merits. See McNabb v. Yates, 576 F.3d 1028, 1029 (9th
6 Cir. 2009). The Petition is therefore successive within the
7 meaning of § 2244(b) because it challenges the same judgment as
8 the earlier petition denied on the merits. Under §
9 2244(b) (3) (A), then, Petitioner was required to secure an order
10 from the Ninth Circuit authorizing its filing before he filed it.
11 See Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001) (per
12 curiam). A review of the Ninth Circuit's docket indicates that
13 he has not obtained such an order; indeed, he apparently has
14 never even asked for one.

15 Because it is successive and unauthorized, the Petition is
16 SUMMARILY DISMISSED without prejudice to its refiling should
17 Petitioner obtain the necessary permission from the Ninth
18 Circuit. See R. 4, Rs. Governing § 2254 Petitions in U.S. Dist.
19 Cts. ("If it plainly appears . . . that the petitioner is not
20 entitled to relief . . . the judge must dismiss the
21 petition[.]"); C.D. Cal. R. 72-3.2 (authorizing Magistrate Judge
22 to prepare summary-dismissal order for District Judge to sign).

23 DATED: November 18, 2022


24 MARK C. SCARSI
25 U.S. DISTRICT JUDGE

25 Presented by:

26 
27 Jean Rosenbluth
28 U.S. Magistrate Judge