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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION

ADRIAN SOLORIO,)	Case No. SACV 21-01426-ODW (AS)
)	
Petitioner,)	ORDER OF DISMISSAL
)	
v.)	
)	
W. SULLIVAN, Warden,)	
)	
Respondent.)	
_____)	

I. BACKGROUND

On August 30, 2021, Adrian Solorio ("Petitioner"), a California state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 ("Petition"). (Dkt. No. 1). Petitioner challenges his 2009 conviction for first degree murder, various firearm enhancements, and sentence of life without the possibility of parole, in Orange County Superior Court (Case No. 6CF1702). (See

1 Petition at 2).¹ The Petition alleges the following grounds for
2 federal habeas relief: (1) Petitioner was wrongfully convicted
3 and has the right to have a handgun tested pursuant to California
4 Penal Code ("P.C.") § 1405; (2) Petitioner was convicted with
5 material false evidence and has the right to bring a habeas corpus
6 petition pursuant to Senate Bill Section 1137; (3) The prosecution
7 intimidated Petitioner and made him violate his Fifth Amendment
8 right against self-incrimination, and the felony murder rule and
9 the natural and probable consequences doctrine have been amended
10 under Senate Bill 1437 (P.C. § 1170.95); (4) Firearm enhancements
11 should be stricken or dismissed under Senate Bill 620 (P.C. §
12 12022.53); and (5) Petitioner is entitled to a youth offender
13 parole hearing under Senate Bill 260 (P.C. § 3051(b)(1)).
14 (Petition at 5-6).²

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16 On July 19, 2012, Petitioner filed a Petition for Writ of
17 Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C.
18 § 2254, in which he challenged the same 2009 conviction, firearm
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21 ¹ The Court takes judicial notice of the pleadings in
22 Adrian Solorio v. Ron Barnes, Warden, Case No. SACV 12-01175-GAF
23 (RZ), which, on May 6, 2015, was transferred to the calendar of
District Judge Manuel Real and the undersigned Magistrate Judge.
See SACV 12-01175-R (AS); Dkt. Nos. 52-53.

24 ² Petitioner has filed two habeas petitions which contain
25 the same allegations as the Petition: On June 9, 2021,
26 Petitioner filed a habeas petition in Adrian Solorio v. W.
27 Sullivan, Warden, Case No. SACV 21-01038-ODW (AS), which was
28 dismissed on June 15, 2021, without prejudice as an unauthorized,
successive petition. Id., Dkt. Nos. 1, 4; and on June 3, 2021,
Petitioner filed a habeas petition in Adrian Solorio v. W.
Sullivan, Warden, Case No. SACV 21-01006-ODW (AS), which was
dismissed on June 10, 2021, without prejudice as an unauthorized,
successive petition. Id., Dkt. Nos. 1, 3.

1 enhancements, and sentence ("prior habeas action"). See Adrian
2 Solorio v. Ron Barnes, Warden, Case No. SACV 12-01175-R (AS); Dkt.
3 No. 1. On June 10, 2013, the Court issued an Order and Judgment
4 dismissing the prior habeas action with prejudice, in accordance
5 with the findings and recommendations of the assigned Magistrate
6 Judge. Id.; Dkt. Nos. 35-36. On the same date, the Court denied
7 Petitioner a certificate of appealability. Id.; Dkt. No. 37. On
8 May 20, 2014, the Ninth Circuit Court of Appeals denied
9 Petitioner's request for a certificate of appealability. Id.;
10 Dkt. No. 46.³

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12 **II. DISCUSSION**

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14 The Antiterrorism and Effective Death Penalty Act of 1996
15 ("AEDPA"), enacted on April 24, 1996, provides in pertinent part
16 that:

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18 (a) No circuit or district judge shall be
19 required to entertain an application for a writ of
20 habeas corpus to inquire into the detention of a
21 person pursuant to a judgment of a court of the
22 United States if it appears that the legality of such
23 detention has been determined by a judge or court of
24 the United States on a prior application for a writ
25 of habeas corpus, except as provided in §2255.

26
27 ³ The Court subsequently denied two Motions for Relief
28 from Judgment pursuant to Fed.R.Civ.P 60(b)(6). Id.; Dkt. Nos.
54, 57,

1 (b)(1) A claim presented in a second or
2 successive habeas corpus application under section
3 2254 that was presented in a prior application shall
4 be dismissed.

5 (2) A claim presented in a second or successive
6 habeas corpus application under section 2254 that was
7 not presented in a prior application shall be
8 dismissed unless--

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

13 (B) (i) the factual predicate for the claim could
14 not have been discovered previously through the
15 exercise of due diligence; and

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

22 (3) (A) Before a second or successive application
23 permitted by this section is filed in the district
24 court, the applicant shall move in the appropriate
25 court of appeals for an order authorizing the
26 district court to consider the application.

27 (B) A motion in the court of appeals for an
28 order authorizing the district court to consider a

1 second or successive application shall be determined
2 by a three-judge panel of the court of appeals.

3 (C) The court of appeals may authorize the
4 filing of a second or successive application only if
5 it determines that the application makes a prima
6 facie showing that the application satisfies the
7 requirements of this subsection.

8 (D) The court of appeals shall grant or deny the
9 authorization to file a second or successive
10 application not later than 30 days after the filing
11 of the motion.

12 (E) The grant or denial of an authorization by
13 a court of appeals to file a second or successive
14 application shall not be appealable and shall not be
15 the subject of a Petition for Rehearing or for a Writ
16 of Certiorari.

17 (4) A district court shall dismiss any claim
18 presented in a second or successive application that
19 the court of appeals has authorized to be filed
20 unless the applicant shows that the claim satisfies
21 the requirements of this section. 28 U.S.C. § 2244.
22

23 28 U.S.C. § 2244(b)(3) "creates a 'gatekeeping' mechanism for
24 the consideration of second or successive applications in district
25 court. The prospective applicant must file in the court of
26 appeals a motion for leave to file a second or successive habeas
27 application in the district court. § 2244(b)(3)(A)." Felker v.
28 Turpin, 518 U.S. 651, 657(1996).

1 The instant Petition and the prior habeas action challenge
2 Petitioner's custody pursuant to the same 2009 judgment entered
3 by the Orange County Superior Court. Accordingly, the instant
4 Petition, filed on August 30, 2021, well after the effective date
5 of the AEDPA, is a second or successive habeas petition for
6 purposes of 28 U.S.C. § 2244. Therefore, Petitioner was required
7 to obtain authorization from the Court of Appeals before filing
8 the present Petition. See 28 U.S.C. §2244(b)(3)(A). Although
9 Petitioner may have submitted an application for leave to file a
10 second or successive petition to the Ninth Circuit Court of
11 Appeals (see Petition, Attachment), no authorization has been
12 obtained in this case.

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14 Moreover, the claims asserted in the instant Petition do not
15 appear to fall within the exceptions to the bar on second or
16 successive petitions because the asserted claims are not based on
17 newly discovered facts or a "a new rule of constitutional law,
18 made retroactive to cases on collateral review by the Supreme
19 Court, that was previously unavailable." Tyler v. Cain, 533 U.S.
20 656, 662 (2001); see also Johnson v. California, 2019 WL 4276636,
21 at n.3 (C.D. Cal. Sept. 10, 2019) ("[A] new state right afforded
22 by an amended state statute does not create a new federal
23 constitutional right and certainly is not the equivalent of a
24 federal constitutional right newly recognized by the United States
25 Supreme Court and made retroactively applicable to cases on
26 collateral review."; quoting Trejo v. Sherman, 2016 WL 9075049,
27 at *2 (C.D. Cal. Oct. 24, 2016), report and recommendation
28 accepted, 2016 WL 8738143 (C.D. Cal. Nov. 18, 2016)). However,

1 this determination must be made by the United States Court of
2 Appeals upon a petitioner's motion for an order authorizing the
3 district court to consider his second or successive petition. 28
4 U.S.C. § 2244(b); see Burton v. Stewart, 549 U.S. 147, 157 (2007)
5 (where the petitioner did not receive authorization from the Court
6 of Appeals before filing second or successive petition, "the
7 District Court was without jurisdiction to entertain [the
8 petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir. 2000)
9 ("[T]he prior-appellate-review mechanism set forth in § 2244(b)
10 requires the permission of the court of appeals before 'a second
11 or successive habeas application under § 2254' may be
12 commenced.").

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14 Because Petitioner has not obtained authorization from the
15 Ninth Circuit Court of Appeals, this Court cannot entertain the
16 present Petition. See Burton v. Stewart, 549 U.S. at 157.

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