

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

CARL A. TAYLOR, JR.,  
Petitioner,  
v.  
VALENZUELA, Warden,  
Respondent.

Case No. 1:14-cv-00050-AWI-SAB-HC  
FINDINGS AND RECOMMENDATION  
REGARDING SUCCESSIVE PETITION  
FOR WRIT OF HABEAS CORPUS

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In the petition filed on January 14, 2014, Petitioner challenges his 1999 conviction sustained in Kern County Superior Court for first degree murder, attempted murder, ex-felon in possession of a firearm, and personal use of a firearm resulting in great bodily injury. A review of the Court's dockets and files shows Petitioner has previously sought habeas relief with respect to this conviction in Taylor v. Adams, Case No. 1:07-CV-00899-AWI-TAG-HC. In that case, the petition was dismissed as time-barred. Petitioner appealed the dismissal to the Ninth Circuit Court of Appeals, and the appeal was denied on January 16, 2009.

///  
///

1 I.

2 DISCUSSION

3 A federal court must dismiss a second or successive petition that raises the same grounds  
4 as a prior petition. 28 U.S.C. § 2244(b)(1). The court must also dismiss a second or successive  
5 petition raising a new ground unless the petitioner can show that 1) the claim rests on a new,  
6 retroactive, constitutional right or 2) the factual basis of the claim was not previously  
7 discoverable through due diligence, and these new facts establish by clear and convincing  
8 evidence that but for the constitutional error, no reasonable factfinder would have found the  
9 applicant guilty of the underlying offense. 28 U.S.C. § 2244(b)(2)(A)-(B). However, it is not the  
10 district court that decides whether a second or successive petition meets these requirements.

11 Section 2244 (b)(3)(A) provides: "Before a second or successive application permitted by  
12 this section is filed in the district court, the applicant shall move in the appropriate court of  
13 appeals for an order authorizing the district court to consider the application." In other words,  
14 Petitioner must obtain leave from the Ninth Circuit before he can file a second or successive  
15 petition in district court. See Felker v. Turpin, 518 U.S. 651, 656-657 (1996). This Court must  
16 dismiss any second or successive petition unless the Court of Appeals has given Petitioner leave  
17 to file the petition because a district court lacks subject-matter jurisdiction over a second or  
18 successive petition. Pratt v. United States, 129 F.3d 54, 57 (1st Cir. 1997); Greenawalt v.  
19 Stewart, 105 F.3d 1268, 1277 (9th Cir. 1997), *cert. denied*, 117 S.Ct. 794 (1997); Nunez v.  
20 United States, 96 F.3d 990, 991 (7th Cir. 1996).

21 Because the current petition was filed after April 24, 1996, the provisions of the  
22 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) apply to Petitioner's current  
23 petition. Lindh v. Murphy, 521 U.S. 320, 327 (1997). Petitioner makes no showing that he has  
24 obtained prior leave from the Ninth Circuit to file his successive petition attacking the  
25 conviction. That being so, this Court has no jurisdiction to consider Petitioner's renewed  
26 application for relief from that conviction under Section 2254 and must dismiss the petition. See  
27 Greenawalt, 105 F.3d at 1277; Nunez, 96 F.3d at 991.

28 ///

1 **II.**

2 **RECOMMENDATION**

3 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas  
4 corpus be DISMISSED as successive.

5 This Findings and Recommendation is submitted to the Honorable Anthony W. Ishii,  
6 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and  
7 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of  
8 California.

9 Within thirty (30) days after being served with a copy, Petitioner may file written  
10 objections with the Court. Such a document should be captioned “Objections to Magistrate  
11 Judge’s Findings and Recommendation.” The Court will then review the Magistrate Judge’s  
12 ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections  
13 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
14 Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 IT IS SO ORDERED.

16 Dated: February 4, 2014

17   
18 \_\_\_\_\_  
19 UNITED STATES MAGISTRATE JUDGE  
20  
21  
22  
23  
24  
25  
26  
27  
28