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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MANUEL SAMPERIO,
Petitioner,
v.
UNNAMED,
Respondent.

Case No. 1:14-cv-00956-LJO-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.

On June 13, 2014, Petitioner filed an application for leave to file a second or successive habeas petition in the Sacramento Division of the United States District Court for the Eastern District of California. The application was construed as a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. On June 19, 2014, the petition was transferred to the Fresno Division and received in this Court.

In the instant petition, Petitioner challenges his 1999 conviction sustained in Fresno County Superior Court for lewd and lascivious acts with a child under fourteen years of age with enhancements for kidnaping and burglary. A review of the Court's dockets and files shows Petitioner has previously sought habeas relief with respect to this conviction in Samperio v.

1 Martel, Case No. 1:10-CV-01528-LJO-SMS-HC. In that case, the petition was dismissed with
2 prejudice as time-barred. Petitioner appealed the dismissal to the Ninth Circuit Court of
3 Appeals, and the appeal was denied on August 29, 2012.

4 **I.**

5 **DISCUSSION**

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

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

24 Because the current petition was filed after April 24, 1996, the provisions of the
25 Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) apply to Petitioner's current
26 petition. Lindh v. Murphy, 521 U.S. 320, 327 (1997). Petitioner makes no showing that he has
27 obtained prior leave from the Ninth Circuit to file his successive petition attacking the
28 conviction. That being so, this Court has no jurisdiction to consider Petitioner's renewed

1 application for relief from that conviction under Section 2254 and must dismiss the petition. See
2 Greenawalt, 105 F.3d at 1277; Nunez, 96 F.3d at 991.

3 **II.**

4 **RECOMMENDATION**

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

7 This Findings and Recommendation is submitted to the Honorable Lawrence J. O'Neill,
8 United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and
9 Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of
10 California.

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

17 IT IS SO ORDERED.

18 Dated: July 21, 2014

19 
20 UNITED STATES MAGISTRATE JUDGE