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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LONNIE DAWSON,
Petitioner,
v.
R. ZUNIGA, Warden,
Respondent.

No. 1:15-cv-01217-LJO-SKO HC
**FINDINGS AND RECOMMENDATION
THAT COURT DISMISS CASE AS
SECOND OR SUCCESSIVE**
(Doc. 21)

Petitioner Lonnie Dawson is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondent R. Zuniga, Warden of the Mendota Federal Correctional Institution, moves to dismiss the petition as second or successive. Because Petitioner has not sought leave of the Ninth Circuit Court of Appeals to file a second or successive petition, the undersigned recommends that the Court dismiss the petition.

I. Procedural and Factual Background

A. State Conviction

The above-captioned petition seeks relief in relation to Petitioner’s conviction in the Commonwealth of Pennsylvania for the November 5, 1975, murder of James Williams in Philadelphia. A jury convicted Petitioner of first degree murder in April 1976, and the court subsequently sentenced him to life imprisonment. On July 5, 1979, the Pennsylvania Supreme Court reversed the conviction and sentence, and remanded Petitioner’s case for a new trial. Following retrial in August 1982, Petitioner was again convicted of first degree murder and sentenced to life imprisonment.

1 **B. Federal Conviction**

2 When Pennsylvania tried Petitioner the second time, Petitioner was serving a 50-year term
3 in federal prison after being convicted of various drug offenses. Petitioner is presently in federal
4 custody subject to a detainer on the Pennsylvania conviction. His projected federal release date is
5 January 15, 2023.
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7 **C. 2009 Habeas Petition**

8 On September 18, 2009, Petitioner filed a petition for writ of habeas corpus pursuant to 28
9 U.S.C. § 2254 in the U.S. District Court for the Eastern District of Pennsylvania. *See Dawson v.*
10 *Holenche* (2:09-cv-03691-WY) (Doc. 21-1 at 21-32). The Magistrate Judge recommended that
11 the petition be dismissed as time-barred. Doc. 12-1 at 86-92. On May 20, 2010, the District
12 Court entered an order adopting the Report and Recommendation of the Magistrate Judge,
13 dismissed the petition, and denied a certificate of appealability. *Dawson v. Commonwealth of*
14 *Pennsylvania*, 2010 WL 2026663 (E.D.Pa. May 20, 2010) (No. 2:09-cv-03691-WY) (Doc. 21-1
15 at 96).
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17 **II. Petition is Barred as Second or Successive**

18 Because Petitioner has previously sought federal habeas relief for the August 1982 murder
19 conviction, the pending petition is second or successive. The circuit court of appeals, not the
20 district court, must decide whether a second or successive petition satisfies the statutory
21 requirements to proceed. 28 U.S.C. §2244(b)(3)(A) ("Before a second or successive petition
22 permitted by this section is filed in the district court, the applicant shall move in the appropriate
23 court of appeals for an order authorizing the district court to consider the application"). This
24 means that a petitioner may not file a second or successive petition in district court until he has
25 obtained leave from the court of appeals. *Felker v. Turpin*, 518 U.S. 651, 656-57 (1996). In the
26 absence of an order from the appropriate circuit court, a district court lacks jurisdiction over the
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1 petition and must dismiss the second or successive petition. *Greenawalt v. Stewart*, 105 F.3d
2 1268, 1277 (9th Cir. 1997). Accordingly, the Court must dismiss the above-captioned petition.

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4 **III. Certificate of Appealability**

5 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
7 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
8 certificate of appealability is 28 U.S.C. § 2253, which provides:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255
10 before a district judge, the final order shall be subject to review, on appeal, by
11 the court of appeals for the circuit in which the proceeding is held.

12 (b) There shall be no right of appeal from a final order in a proceeding
13 to test the validity of a warrant to remove to another district or place for
14 commitment or trial a person charged with a criminal offense against the
United States, or to test the validity of such person's detention pending
removal proceedings.

15 (c) (1) Unless a circuit justice or judge issues a certificate of
16 appealability, an appeal may not be taken to the court of appeals from—

17 (A) the final order in a habeas corpus proceeding in which the
18 detention complained of arises out of process issued by a State court; or

19 (B) the final order in a proceeding under section 2255.

20 (2) A certificate of appealability may issue under paragraph (1)
21 only if the applicant has made a substantial showing of the denial of a
constitutional right.

22 (3) The certificate of appealability under paragraph (1) shall
23 indicate which specific issues or issues satisfy the showing required by
paragraph (2).

24 If a court denies a habeas petition, the court may only issue a certificate of appealability
25 "if jurists of reason could disagree with the district court's resolution of his constitutional claims
26 or that jurists could conclude the issues presented are adequate to deserve encouragement to
27 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
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1 Although the petitioner is not required to prove the merits of his case, he must demonstrate
2 "something more than the absence of frivolity or the existence of mere good faith on his . . .
3 part." *Miller-El*, 537 U.S. at 338.

4 Reasonable jurists would not find the Court's determination that Petitioner is not entitled
5 to federal habeas corpus relief to be debatable or wrong, or conclude that the issues presented
6 required further adjudication. Accordingly, the Court declines to issue a certificate of
7 appealability.

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9 **IV. Conclusion and Recommendation**

10 The undersigned recommends that the Court dismiss the petition for writ of habeas corpus
11 and decline to issue a certificate of appealability.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**
14 **(30) days** after being served with these Findings and Recommendations, either party may file
15 written objections with the Court. The document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and
17 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure
18 to file objections within the specified time may constitute waiver of the right to appeal the District
19 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*
20 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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24 IT IS SO ORDERED.

25 Dated: October 7, 2016

26 /s/ Sheila K. Oberto
27 UNITED STATES MAGISTRATE JUDGE
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