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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN ANTHONY BUCHANAN,
Petitioner,
v.
DEPARTMENT OF CORRECTIONS,
Respondent.

Case No. 1:17-cv-00518-EPG-HC
ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner John Anthony Buchanan is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has consented to the jurisdiction of the United States Magistrate Judge. (ECF No. 4).

In the instant petition, Petitioner challenges his 2005 conviction in the Fresno County Superior Court for carjacking. As Petitioner has previously sought federal habeas relief with respect to the challenged conviction, the Court finds that dismissal of the petition is warranted pursuant to 28 U.S.C. § 2244(b) because it is an unauthorized successive petition.

I.
DISCUSSION

Rule 4 of the Rules Governing Section 2254 Cases requires preliminary review of a habeas petition and allows a district court to dismiss a petition before the respondent is ordered to file a response, if it “plainly appears from the petition and any attached exhibits that the

1 petitioner is not entitled to relief in the district court.” Rule 4, Rules Governing Section 2254
2 Cases.

3 **A. Unauthorized Successive Petition**

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

12 Section 2244(b)(3)(A) provides: “Before a second or successive application permitted by
13 this section is filed in the district court, the applicant shall move in the appropriate court of
14 appeals for an order authorizing the district court to consider the application.” In other words, a
15 petitioner must obtain leave from the Ninth Circuit before he can file a second or successive
16 petition in district court. See Felker v. Turpin, 518 U.S. 651, 656–57 (1996). This Court must
17 dismiss any second or successive petition unless the Court of Appeals has given a petitioner
18 leave to file the petition because a district court lacks subject-matter jurisdiction over a second or
19 successive petition. Burton v. Stewart, 549 U.S. 147, 157 (2007).

20 In the instant federal petition for writ of habeas corpus, Petitioner challenges his 2005
21 conviction in the Fresno County Superior Court for carjacking. (ECF No. 1 at 1).¹ Petitioner
22 previously sought federal habeas relief in this Court with respect to the same conviction. See
23 Order, Buchanan v. Scribner, No. 1:08-cv-00304-LJO-WMW (E.D. Cal. Aug. 13, 2009)
24 (denying petition concerning “the April 2005 trial, [at which] petitioner was convicted of
25 carjacking”).² The Court finds that the instant petition is “second or successive” under 28 U.S.C.
26 § 2244(b). Petitioner makes no showing that he has obtained prior leave from the Ninth Circuit

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¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

28 ² The Court may take judicial notice of its own records in other cases. United States v. Wilson, 631 F.2d 118, 119
(9th Cir. 1980).

1 to file his successive petition. Therefore, this Court has no jurisdiction to consider Petitioner’s
2 renewed application for relief under 28 U.S.C. § 2254 and must dismiss the petition. See Burton,
3 549 U.S. at 157.

4 **B. Certificate of Appealability**

5 Having found that Petitioner is not entitled to habeas relief, the Court now turns to the
6 question of whether a certificate of appealability should issue. See Rule 11, Rules Governing
7 Section 2254 Cases. A state prisoner seeking a writ of habeas corpus has no absolute entitlement
8 to appeal a district court’s denial of his petition, and an appeal is only allowed in certain
9 circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335–36 (2003).

10 The controlling statute in determining whether to issue a certificate of appealability is 28
11 U.S.C. § 2253, which provides:

12 (a) In a habeas corpus proceeding or a proceeding under section
13 2255 before a district judge, the final order shall be subject to
14 review, on appeal, by the court of appeals for the circuit in which
the proceeding is held.

15 (b) There shall be no right of appeal from a final order in a
16 proceeding to test the validity of a warrant to remove to another
17 district or place for 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.

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

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

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

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

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

27 If a court denies habeas relief on procedural grounds without reaching the underlying
28 constitutional claims, the court should issue a certificate of appealability “if jurists of reason

1 would find it debatable whether the petition states a valid claim of the denial of a constitutional
2 right and that jurists of reason would find it debatable whether the district court was correct in its
3 procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). “Where a plain procedural bar
4 is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist
5 could not conclude either that the district court erred in dismissing the petition or that the
6 petitioner should be allowed to proceed further.” Id.

7 In the present case, the Court finds that reasonable jurists would not find the Court’s
8 determination that Petitioner’s federal habeas corpus petition should be dismissed debatable or
9 wrong, or that Petitioner should be allowed to proceed further. Therefore, the Court declines to
10 issue a certificate of appealability.

11 **II.**

12 **ORDER**

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The petition for writ of habeas corpus is DISMISSED as successive;
- 15 2. The Clerk of Court is directed to CLOSE the case; and
- 16 3. The Court DECLINES to issue a certificate of appealability.

17
18 IT IS SO ORDERED.

19 Dated: May 15, 2017

20 /s/ Eric P. Gray
21 UNITED STATES MAGISTRATE JUDGE