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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUSSELL D. BURGESS,

Petitioner,

No. CIV S-09-2632 JAM EFB P

vs.

MIKE KNOWLES,

Respondent.

ORDER TO SHOW CAUSE

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Petitioner, a prisoner without counsel, has filed a petition for a writ of habeas corpus. *See* 28 U.S.C. § 2254. The court has reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Proceedings, and finds that the petition appears to be second or successive. Thus, petitioner must show either that the petition is not second or successive or that he has obtained permission to proceed from the appellate court.

Before filing a second or successive petition in a district court, a petitioner must obtain from the appellate court “an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Without an order from the appellate court, the district court is without jurisdiction to consider a second or successive petition. *See Burton v. Stewart*, 549 U.S. 147, 152 (2007). A petition is second or successive if it makes “claims contesting the same custody imposed by the same judgment of a state court” that the petitioner previously challenged, and on

1 which the federal court issued a decision on the merits. *Id.* at 153; *Slack v. McDaniel*, 529 U.S.  
2 473, 485-486 (2000).

3 In the present action, petitioner challenges his April 2000 conviction for first degree  
4 murder. The court has examined its records, and finds that petitioner, proceeding under an aka,  
5 challenged the same conviction in case number No. Civ. S-03-0588 JAM EFB. That petition was  
6 denied on the merits. Therefore, it appears that petitioner is challenging the same judgment that  
7 he previously challenged and which has now been adjudicated on the merits. Thus, it appears that  
8 the September 21, 2009, petition is second or successive. Petitioner offers no evidence that the  
9 appellate court has authorized this court to consider a second or successive petition.

10 Accordingly, it hereby is ORDERED that petitioner shall, within 30 days of the date this  
11 order is served, demonstrate either that this petition is not second or successive or submit  
12 evidence that the appellate court has authorized this court to consider the petition. Petitioner's  
13 failure to comply with this order will result in a recommendation that this action be dismissed  
14 upon the ground that petitioner has without authorization filed a second or successive petition.

15 Dated: June 22, 2010.

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17 EDMUND F. BRENNAN  
18 UNITED STATES MAGISTRATE JUDGE  
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