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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KEITH DARNELL JOHNSON,

12 Petitioner,

No. 2:13-cv-0880 AC P

13 vs.

14 P. BRAZELTON, Warden,

15 Respondent.

ORDER

16 _____/
17 Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 37-year-to-life sentence to
19 state prison for, inter alia, kidnapping and sexual battery. See Petition at 1.

20 Petitioner raises the following grounds: 1) judicial misconduct; 2) ineffective
21 assistance of trial counsel;¹ 3) cruel and punishment/insufficient evidence to support sentencing
22 enhancements; 4) ineffective assistance of appellate counsel. Id. at 4-6.

23 Court records demonstrate that the claims of the instant petition challenging the
24 same conviction were, for the most part, previously adjudicated in Case No. 2:06-cv-0554 MCE
25 _____

26 ¹ The court infers the nature of ground two from the portion of the claim petitioner
has left visible.

1 CHS P. "Before a second or successive application . . . is filed in the district court, the applicant
2 shall move in the appropriate court of appeals for an order authorizing the district court to
3 consider the application." 28 U.S.C. § 2244(3)(A). Under Ninth Circuit Rule 22-3, "[i]f a
4 second or successive petition or motion, or an application for leave to file such an application or
5 motion, is mistakenly submitted to the district court, the district court shall refer it to the court of
6 appeals."

7 The instant petition is a second or successive petition to Case No. 2:06-cv-0554
8 MCE CHS P because it challenges the same conviction and sentence addressed therein.
9 Moreover, petitioner raises virtually the identical claims denied on the merits therein. To the
10 extent he may be intending to bring different claims, before he may proceed with this action,
11 petitioner must obtain an order from the Ninth Circuit Court of Appeals to proceed with this
12 action. Accordingly, the court will order this action transferred to the Ninth Circuit.

13 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed
14 to transfer this action to the Ninth Circuit Court of Appeals.

15 DATED: May 13, 2013

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18 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

19 AC:009
john0880.scs