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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DERRICK K. COURTNEY,
Petitioner,
v.
FULKS, et al.,
Respondents.

No. 2:13-cv-2280-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner without counsel, has filed a petition for a writ of habeas corpus pursuant to 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 is second or successive and must therefore be dismissed.

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 which the federal court issued a decision on the merits. *Burton v. Stewart*, 549 U.S. 147 (2007); *see also Slack v. McDaniel*, 529 U.S. 473, 485-86 (2000). 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*, 549 U.S. 147.

1 In the present action, petitioner challenges a judgment of conviction entered in the
2 Sacramento County Superior Court on or around June 14, 2004, for murder, robbery, and
3 possession of a firearm. *See* Petition (ECF No. 1) at 1; *see also id.* at 12 (referencing underlying
4 criminal case number 02F00882); *id.* at 2 (referencing direct appeal case number C047770).
5 Petitioner was sentenced to life without the possibility of parole. *Id.* at 1. Petitioner admits that
6 he previously challenged this conviction and sentence in this court. *Id.* at 2 ¶ 11(a). Indeed, the
7 court has examined its records, and finds that petitioner challenged the same conviction in an
8 earlier action. In *Courtney v. Knowles*, No. 2:07-cv-1045-MJP, the court considered petitioner’s
9 challenge to his 2004 Sacramento County Superior Court conviction of murder, robbery, and
10 possession of a firearm by a convicted felon, and denied the petition on its merits. *See Courtney*,
11 ECF No. 45 (order denying habeas relief); *see also* ECF No. 1 at 15 (original petition, referencing
12 case number C047770).

13 Since petitioner challenges the same judgment now that he previously challenged and
14 which was adjudicated on the merits, the petition now pending is second or successive. Petitioner
15 offers no evidence that the appellate court has authorized this court to consider a second or
16 successive petition. Since petitioner has not demonstrated that the appellate court has authorized
17 this court to consider a second or successive petition, this action must be dismissed for lack of
18 jurisdiction. *See Burton*, 549 U.S. 147; *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001)
19 (per curiam).

20 Accordingly, it is hereby ORDERED that the Clerk of the Court randomly assign a United
21 States District Judge to this action.

22 Further, IT IS HEREBY RECOMMENDED that this action be dismissed for lack of
23 jurisdiction.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, any party may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections

1 shall be served and filed within fourteen days after service of the objections. Failure to file
2 objections within the specified time may waive the right to appeal the District Court's order.
3 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
4 1991). In his objections petitioner may address whether a certificate of appealability should issue
5 in the event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
6 Section 2254 Cases in the United States District Courts (the district court must issue or deny a
7 certificate of appealability when it enters a final order adverse to the applicant).

8 DATED: November 13, 2013.

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10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE
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