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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 JEFFREY DUPREE JONES,

No. 2:14-cv-2928-CMK-P

12 Petitioner,

13 vs.

ORDER

14 F. FOULK,

15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254.

19 Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary
20 dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any
21 exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the
22 instant case, it is plain that petitioner is not entitled to federal habeas relief. This is petitioner’s
23 second petition for a writ of habeas corpus filed in this court, challenging the same conviction.
24 Petitioner acknowledges this, and has informed the court that his current petition filed in this
25 court was in fact his request to the Ninth Circuit to file a second or successive petition. He has
26 requested this court forward the current petition and application to the Ninth Circuit Court of

1 Appeals.

2 Under 28 U.S.C. § 2244(b)(1), “[a] claim presented in a second or successive
3 habeas corpus application . . . that was presented in a prior application shall be dismissed.”

4 Under § 2244(b)(2), “[a] claim presented in a second or successive habeas corpus application . . .
5 that was not presented in a prior application shall be dismissed . . .” unless one of two
6 circumstances exist. Either the newly raised claim must rely on a new rule of constitutional law,
7 or the factual predicate of the new claim could not have been discovered earlier through the
8 exercise of due diligence and the new claim, if proven, establishes actual innocence. See id.

9 Before a second or successive petition potentially permissible under § 2244(b)(2) can be filed,
10 the petitioner must first obtain leave of the Court of Appeals. See 28 U.S.C. § 2244(b)(3). In the
11 absence of proper authorization from the Court of Appeals, the district court lacks jurisdiction to
12 consider a second or successive petition and must dismiss it. See Cooper v. Calderon, 274 F.3d
13 1270 (9th Cir. 2001) (per curiam).

14 The court agrees that petitioner’s application to file a second or successive
15 petition should have been filed in the Ninth Circuit Court of Appeals, not in this court.

16 Accordingly, this action shall be transferred, pursuant to 28 U.S.C. § 1631, to the Ninth Circuit
17 Court of Appeals. See United States v. Barrett, 178 F.3d 34, 41 n.1 (1st Cir. 1999); Coleman v.
18 United States, 106 F.3d 339, 341 (10th Cir. 1997) (per curiam); In re Sims, 111 F.3d 45, 47 (6th
19 Cir. 1997); Liriano v. United States, 95 F.3d 119, 122-23 (2d Cir. 1996). All pending motions
20 are denied without prejudice.

21 IT IS SO ORDERED.

22 DATED: May 6, 2015

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24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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