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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILIP R. MELENDEZ,
Petitioner,
v.
RONALD DAVIS,
Respondent.

No. 2:15-cv-1209-EFB P

ORDER

Petitioner, a state prisoner proceeding without counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.¹ 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

¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to petitioner’s consent. *See* 28 U.S.C. § 636; *see also* E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Without an order from
2 the appellate court, the district court is without jurisdiction to consider a second or successive
3 petition. *See Burton*, 549 U.S. 147.

4 In the present action, petitioner challenges a judgment of conviction entered in the
5 Sacramento County Superior Court on January 4, 2000, for second degree murder, personal use of
6 a firearm, and assault with a deadly weapon, which resulted in a state prison sentence of 41 years
7 to life. ECF No. 1 at 1. The court has examined its records, and finds that petitioner challenged
8 the same judgment of conviction in an earlier action. Specifically, in *Melendez v. Scribner*, No.
9 2:03-cv-1593-GEB-KJM (E.D. Cal.), the court considered petitioner’s challenge to the same
10 judgment of conviction. *See Melendez*, ECF No. 22 (magistrate judge’s August 30, 2006 findings
11 and recommendations to deny petition on the merits); ECF No. 26 (district judge’s December 11,
12 2006 order adopting findings and recommendations and denying petitioner’s application for a
13 writ of habeas corpus). Since petitioner challenges the same judgment now that he previously
14 challenged and which was adjudicated on the merits, the petition now pending is second or
15 successive.

16 Petitioner offers no evidence that the appellate court has authorized this court to consider
17 a second or successive petition. Since petitioner has not demonstrated that the appellate court has
18 authorized this court to consider a second or successive petition, this action must be dismissed for
19 lack of jurisdiction. *See Burton*, 549 U.S. 147; *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th
20 Cir. 2001) (per curiam).

21 Accordingly, it is hereby ORDERED that this action is dismissed for lack of jurisdiction
22 and no certificate of appealability shall issue.

23 DATED: July 2, 2015.

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE
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