


1 (2005) (emphasis in original). “[A] ‘claim’ as used in § 2244(b) is an asserted federal basis for
2 relief from a state court’s judgment of conviction.” Id. at 530. “A habeas petition is second or
3 successive only if it raises claims that were or could have been adjudicated on the merits.”
4 McNabb v. Yates, 576 F.3d 1028, 1029 (9th Cir. 2009) (citing Woods v. Carey, 525 F.3d 886,
5 888 (9th Cir. 2008)).

6 In the instant petition, petitioner challenges his 2002 convictions in Sacramento Superior
7 Court Case No. 01F04127. ECF No. 38 at 1. The petition indicates (id. at 3), and the court’s
8 records confirm, that petitioner has previously filed an application for a writ of habeas corpus
9 attacking the conviction and sentence in Case No. 01F04127. The previous petition was filed on
10 August 11, 2005, and was denied on the merits on August 8, 2008. Irving v. People of the State
11 of California, E.D. Cal. No. 2:05-cv-01621 LKK CMK, ECF Nos. 1, 60, 67. This court takes
12 judicial notice of the record in that proceeding. United States v. Wilson, 631 F.2d 118, 119 (9th
13 Cir. 1980) (“[A] court may take judicial notice of its own records in other cases.”).

14 Petitioner has been advised on multiple occasions that if he is trying to challenge his
15 conviction in Case No. 01F04127, then pursuant to 28 U.S.C. § 2244(b)(3) he must first move in
16 the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court
17 to consider the application and provide evidence that such authorization has been granted. ECF
18 No. 10 at 3; ECF No. 17 at 2; ECF No. 36 at 2-3. He was warned that failure to include evidence
19 that he was authorized to proceed in this court would result in the petition being dismissed. ECF
20 No. 10 at 3; ECF No. 36 at 2-3. Petitioner has not provided any evidence that he has sought and
21 received the required authorization. This action will therefore be dismissed without prejudice to
22 re-filing once petitioner receives authorization to proceed from the Ninth Circuit.

23 In accordance with the above, IT IS HEREBY ORDERED that this action is dismissed
24 without prejudice for lack of jurisdiction.

25 DATED: July 19, 2017

26 
27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE