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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANTE PERKINS,  
  
                                Petitioner,  
  
                                v.  
  
JOEL MARTINEZ, Warden,  
  
                                Respondent.

No. 2:16-cv-2690-EFB P

ORDER

Petitioner is a state prisoner proceeding without counsel on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup> He has applied for leave to proceed *in forma pauperis*. His application shows that he satisfies the financial requirements and his application is granted. However, the court has reviewed the petition as required by Rule 4 of the Rules Governing Section 2254 Proceedings, and finds that it 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);

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<sup>1</sup> 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 *see also Slack v. McDaniel*, 529 U.S. 473, 485-86 (2000). Before filing a second or successive  
2 petition in a district court, a petitioner must obtain from the appellate court “an order authorizing  
3 the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Without an order from  
4 the appellate court, the district court is without jurisdiction to consider a second or successive  
5 petition. *See Burton*, 549 U.S. 147.

6 In the present action, petitioner challenges his 2013 conviction for carjacking, second  
7 degree robbery, and possession of a firearm by a felon, entered in the Sacramento County  
8 Superior Court in case number 12F01436. ECF No. 1 at 2.<sup>2</sup> The court has examined its records,  
9 and finds that petitioner challenged the same judgment of conviction in an earlier action.  
10 Specifically, in *Perkins v. CDCR*, No. 2:15-cv-559-KJM-DB (E.D. Cal.), the court considered  
11 petitioner’s challenge to the same judgment of conviction. *See Perkins*, ECF No. 17 (July 6, 2016  
12 findings and recommendations to deny petitioner’s application for a writ of habeas corpus on the  
13 merits); ECF No. 20 (district judge’s November 8, 2016 order adopting those findings and  
14 recommendations and denying petitioner’s application for a writ of habeas corpus). Petitioner  
15 challenges the same judgment now that was previously challenged and adjudicated on the merits.  
16 Accordingly, his current petition is second or successive.

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

22 Accordingly, IT IS HEREBY ORDERED that this action is dismissed for lack of  
23 jurisdiction and the court declines to issue a certificate of appealability.

24 DATED: April 19, 2017.

25   
26 EDMUND F. BRENNAN  
27 UNITED STATES MAGISTRATE JUDGE

28 <sup>2</sup> For ease of reference, all references to page numbers in the petition are to those assigned  
via the court’s electronic filing system.