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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE GUADALUPE CALDERON,
Petitioner,
v.
L. BIRD,
Respondents.

No. 2:21-cv-2381 DAD DB P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2003 conviction in the Sacramento County Superior Court. By order dated April 4, 2022, the petition was dismissed, judgment was entered, and this action was closed. (ECF Nos. 9, 10.)

After judgment was entered, petitioner filed a notice stating that he filed an application for permission to file a second or successive habeas corpus petition. (ECF No. 11.) Thereafter, he filed a request for a response to the petition (ECF No. 12), a request to review his case (ECF No. 13), and a request to reopen his case (ECF No. 17).

Petitioner’s notice asked the court to review his case even though he had not yet obtained authorization to file a second or successive petition from the Ninth Circuit Court of Appeals. (ECF No. 11 at 2-3.) He further stated that he was not aware he needed such authorization before presenting his petition in this court. (Id. at 3.)

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1 Petitioner states in his request for a response that he “submitted a second or successive
2 petition to this court” and that the Ninth Circuit sent his petition to this court for review. (ECF
3 No. 12.) Court records do not indicate any referral from the Ninth Circuit in this action.

4 Petitioner’s request to review the case states that he got permission from the Ninth Circuit
5 on March 28, 2022, and he sent a letter along with the permission to this court. (ECF No. 13 at
6 1.) An attachment to petitioner’s August 18, 2022, request for status states that the Ninth Circuit
7 received his application to file a second or successive petition on March 28, 2022. (ECF No. 14
8 at 6.) However, Ninth Circuit records¹ indicate that petitioner’s application to file a second or
9 successive petition was denied on May 19, 2022.

10 Finally, petitioner’s request to reopen this case states that he was notified on August 24,
11 2022, that his case was closed. (ECF No. 17.) He argues that the fourteen-day objection period
12 did not allow his sufficient time to apply for permission to file a second or successive petition.
13 (Id.) Petitioner again states that he received permission from the Ninth Circuit to file a second or
14 successive petition on March 28, 2022.

15 The undersigned will deny petitioner’s requests because he has not shown that he has
16 received authorization from the Ninth Circuit Court of Appeals. Absent an order from the
17 appellate court, this court does not have jurisdiction to consider a second or successive petition.
18 Burton v. Stewart, 549 U.S. 147, 152 (2007). Moreover, petitioner is required to obtain
19 authorization before filing a petition. See Burton v. Stewart, 549 U.S. 147, 157 (2007) (where
20 petitioner failed to receive authorization from Court of Appeals before filing second or successive
21 petition, “the District Court was without jurisdiction to entertain [the petition]”); Barapind v.
22 Ren0, 225 F.3d 1100, 1111 (9th Cir. 2000) (“[T]he prior-appellate-review mechanism set forth in
23 § 2244(b) requires the permission of the court of appeals before ‘a second or successive habeas
24 application under § 2254’ may be commenced.”).

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27 ¹ A court may take judicial notice of its own record and the record of other courts. See MCIC
28 Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d
118, 119 (9th Cir. 1980).

