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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOUIS R. JENKINS, K-14317,)	
)	
Petitioner,)	No. C 99-4450 CRB (PR)
)	
vs.)	ORDER
)	
RICK HILL, Warden,)	(Docket # 28)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner currently incarcerated at Folsom State Prison, has filed a second notice of appeal and request for a certificate of appealability (COA) from the May 3, 2001 order of this court denying on the merits his petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Petitioner first filed a notice of appeal and request for a COA on June 20, 2001. The court denied a COA on June 25, 2001, and the Ninth Circuit denied a COA as well a couple of months later. Petitioner claims that a COA is in order nine years later due to "new evidence and new facts."

Petitioner's request must be treated as a second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254 because it advances one or more claims for relief from the state court's judgment of conviction. Cf. Gonzalez v. Crosby, 545 U.S. 524, 530-31 (2005) (motion for reconsideration that contains one or more claims for relief from a state court's judgment of conviction is, if not in substance a successive habeas petition, at least similar enough that failing to subject it to the same requirements would be inconsistent with the habeas statute); Allen v. Ornoski, 435 F.3d 946, 957 (9th Cir. 2006) (motion for

1 reconsideration should be treated as a successive habeas petition if the factual
2 predicate for the motion also states a claim for a successive petition under
3 28 U.S.C. § 2244(b)). But a second or successive petition may not be filed in this
4 court unless petitioner first obtains from the United States Court of Appeals for
5 the Ninth Circuit an order authorizing this court to consider the petition. See 28
6 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order from the Ninth
7 Circuit. The petition/request accordingly is DISMISSED without prejudice to
8 refiling if petitioner obtains the necessary order.

9 SO ORDERED.

10 DATED: 12/17/2010

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12 _____
13 CHARLES R. BREYER
14 United States District Judge
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