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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JERRY MONTANO,

No. C 05-5255 SI (pr)

Petitioner,

**ORDER OF DISMISSAL**

v.

JAMES A. YATES, warden,

Respondent.

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Jerry Montano, a prisoner at Pleasant Valley State Prison, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is not his first federal habeas petition concerning his 2001 drug conviction from the Santa Clara County Superior Court. His earlier habeas petition in Montano v. Lamarque, No. C 04-108 SI, was denied on the merits on April 5, 2005. An appeal from that decision is now pending.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Montano has not obtained such an order from the Ninth Circuit. This court will not entertain a new petition from Montano until he first obtains permission from the Court of Appeals for the Ninth Circuit to file such a petition. This action is DISMISSED without prejudice to Montano filing a petition in this court after he obtains the necessary order from the Court of Appeals for the Ninth Circuit.

United States District Court  
For the Northern District of California

1 If Montano wants to attempt to obtain the necessary order from the Ninth Circuit, he should  
2 very clearly mark the first page of his document as a "MOTION FOR ORDER AUTHORIZING  
3 DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION PURSUANT TO 28  
4 U.S.C. § 2244(b)(3)(A)" rather than labeling it as a habeas petition because the Ninth Circuit  
5 clerk's office is apt to simply forward to this court any document labeled as a habeas petition. He  
6 also should mail the motion to the Ninth Circuit (at 95 Seventh Street, San Francisco, CA 94103),  
7 rather than to this court. In his motion to the Ninth Circuit, he should explain how he meets the  
8 requirements of 28 U.S.C. § 2244(b).

9 Petitioner's in forma pauperis application is DENIED. (Docket #2.)


10 The clerk shall close the file.

11 IT IS SO ORDERED.

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13 DATED: December 21, 2005

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SUSAN ILLSTON  
United States District Judge

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