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

ROGER VIET,

Petitioner,

v.

M. MARTEL, Warden,

Respondent.

No. C 09-4175 TEH (PR)

ORDER DISMISSING SUCCESSIVE
PETITION

Doc. #26

_____/

Petitioner, a state prisoner presently incarcerated at the Mule Creek State Prison in Ione, California, has filed a document in this closed habeas case entitled, "Motion Under Rule 60(b)." Doc. #26. The docket of this case shows that Petitioner filed his original petition for a writ of habeas corpus on September 9, 2009. Doc. #1. The Court issued an Order to Show Cause why the petition should not be granted on December 1, 2009. Doc. #5. Respondent filed an answer and Petitioner filed a traverse. Doc. ## 6, 12. On May 17, 2011, the Court issued an order denying the petition and a judgment in favor of Respondent. Doc. ## 15, 16. Petitioner appealed and, on September 27, 2012, the Ninth Circuit denied his request for a certificate of appealability. Doc. #23. Petitioner filed a petition for a writ of certiorari in the United States Supreme Court, which was denied on March 18, 2013. Doc. ## 24, 25.

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On August 9, 2013, Petitioner filed the instant "Motion Under Rule 60(b)." Although Petitioner styles this document as a Rule 60(b) motion, it is, in effect, a successive petition because he reargues the claims he asserted in his original petition. Petitioner's argument that his case should be re-opened because Governor Jerry Brown circumvented federal review under the Antiterrorism and Effective Death Penalty Act (AEDPA) by mischaracterizing his claims as state-law claims is without merit.

A second or successive petition may not be filed in this Court unless Petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit. The petition accordingly is DISMISSED without prejudice to refileing if Petitioner obtains the necessary order.

The clerk shall terminate all pending motions as moot and close the file.

IT IS SO ORDERED.

DATED 08/20/2013



THELTON E. HENDERSON
United States District Judge