Honesto v. United States et al Doc. 4

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER HONESTO,

Petitioner,

vs.

J. HARTLEY, Warden,

Respondent.

_____/

No. C 11-5203 WHA (PR)

ORDER OF DISMISSAL; GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

(Docket No. 2)

Petitioner, a state prisoner proceeding pro se, has filed a second or successive petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. His prior petition, like the instant petition, challenged a 1987 conviction obtained in Santa Clara County Superior Court. The prior petition, *Honesto v. Adams*, No. 06-0308 JF (PR), was dismissed as untimely. The appeal from that decision is currently pending. 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 sought or obtained such an order from the Ninth Circuit. The petition is accordingly **DISMISSED** without prejudice to refiling if petitioner obtains the necessary order. Leave to proceed in forma pauperis (docket number 2) is **GRANTED**.

The clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: October 28, 2011.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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