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United States District Court
For the Northern District of California

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

DASHAUN NELLUM,
Petitioner,

No. C 12-2679 JSW (PR)

ORDER OF DISMISSAL

v.

RALPH DIAZ, Warden,
Respondent.

_____/

Petitioner, a state prisoner currently, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a conviction and sentence obtained in 2000 in Contra Costa County Superior Court. His prior federal petition to challenging the same conviction and sentence was denied on its merits. *Nellum v. McGrath*, No. 03-1000 JSW (PR) (N.D. Cal. Aug. 3, 2005). The judgment of this Court was subsequently affirmed by the Ninth Circuit, *Nellum v. McGrath*, No. 05-16853, slip op. at 5 (9th Cir. Nov. 28, 2006), and the United States Supreme Court denied a petition for a writ of certiorari on June 29, 2007.

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 instant

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petition is accordingly DISMISSED without prejudice to refiling if Petitioner obtains the necessary order.

Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district court to rule on whether a Petitioner is entitled to a certificate of appealability in the same order in which the petition is decided. Petitioner has failed to make a substantial showing that a reasonable jurist would find this Court's denial of his claim on procedural grounds debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this case.

The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

DATED: June 11, 2012



JEFFREY S. WHITE
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 DASHAUN NELLUM,
6 Plaintiff,

Case Number: CV12-02679 JSW

CERTIFICATE OF SERVICE

7 v.


8 RALPH DIAZ et al,
9 Defendant.
10 _____/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
12 District Court, Northern District of California.

13 That on June 11, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 Dashaun Nellum
18 P74141
19 P.O. Box 5244
20 Corcoran, CA 93212

21 Dated: June 11, 2012


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk