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\*E-Filed 1/17/13\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ISAAC MCKINLEY,  
Petitioner,

No. C 12-5048 RS (PR)

**ORDER OF DISMISSAL**

v.

J. MCDONALD, Warden,  
Respondent.

**INTRODUCTION**

Petitioner seeks federal habeas relief from his state convictions. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases.

**BACKGROUND**

According to the petition, in 2005, petitioner pleaded guilty in the Santa Clara County Superior Court to charges of battery and false imprisonment. He was sentenced to a total term of 17 years.

**DISCUSSION**

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in

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For the Northern District of California

1 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).  
2 A district court considering an application for a writ of habeas corpus shall “award the writ  
3 or issue an order directing the respondent to show cause why the writ should not be granted,  
4 unless it appears from the application that the applicant or person detained is not entitled  
5 thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in  
6 the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See*  
7 *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990). As grounds for federal habeas  
8 relief, petitioner alleges that (1) the trial court imposed an impermissible sentence, and  
9 (2) the denial of parole violates his right to due process.

10 The petition will be dismissed as a second or successive petition. Petitioner has filed  
11 at least one previous habeas action regarding the same conviction at issue here, viz.,  
12 No. C 09-03865 RMW, which was filed here in the Northern District on August 24, 2009 and  
13 dismissed on July 31, 2012. In order to file a second or successive petition, petitioner must  
14 obtain an order from the court of appeals authorizing the district court to consider the  
15 petition. *See* 28 U.S.C. § 2244(b)(3)(A). Because petitioner has not shown that he has  
16 received such authorization, the instant petition must be dismissed as second or successive to  
17 the prior-filed petition. Accordingly, the petition is **DISMISSED** with prejudice.

18 A certificate of appealability will not issue. Petitioner has not shown “that jurists of  
19 reason would find it debatable whether the petition states a valid claim of the denial of a  
20 constitutional right and that jurists of reason would find it debatable whether the district court  
21 was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

22 Petitioner’s motion to proceed *in forma pauperis* (Docket No. 3) is **GRANTED**. The  
23 Clerk shall terminate Docket No. 3, enter judgment in favor of respondent, and close the file.

24 **IT IS SO ORDERED.**

25 DATED: January 17, 2013

  
26 RICHARD SEEBORG  
27 United States District Judge  
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