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

TERENCE A. BURTON,)	No. C 12-6013 JSW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL; GRANTING
)	LEAVE TO PROCEED IN FORMA
vs.)	PAUPERIS
)	
KEVIN CHAPPELL, Warden,)	
)	
Respondent.)	
)	(Docket No. 3)

Petitioner, a state prisoner currently, has filed a petition for a writ of habeas corpus pursuant challenging a conviction and sentence obtained state court. Petitioner’s prior petition to this Court challenging the same conviction and sentence was dismissed as untimely. *Burton v. Martel*, No. 12-6013 JSW (PR). The judgment in that case is currently on appeal. 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 United States Court of Appeals for the Ninth Circuit. Even if he has new claims, he must still obtain the necessary authorization under Section 2244(b) from the United States Court of Appeals before he may proceed. And to whatever extent Petitioner is challenging the validity of a previous conviction from 1987 because it was used to enhance the sentence on his present conviction, such a claim is barred by *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394, 401-04 (2001) (barring challenge to constitutionality of expired conviction

1 used to enhance current sentence). Accordingly, the instant petition is DISMISSED.

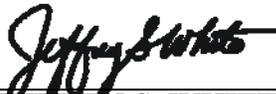
2 Rule 11(a) of the Rules Governing Section 2254 Cases now requires a district
3 court to rule on whether a Petitioner is entitled to a certificate of appealability in the
4 same order in which the petition is decided. Petitioner has failed to make a substantial
5 showing that a reasonable jurist would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

8 Petitioner's application for leave to proceed in forma pauperis (docket number 3)
9 is GRANTED.

10 The Clerk shall enter judgment and close the file.

11 IT IS SO ORDERED.

12 DATED: February 26, 2013

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14 _____
15 JEFFREY S. WHITE
16 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 TERENCE BURTON,
6 Plaintiff,
7

Case Number: CV12-06013 JSW

CERTIFICATE OF SERVICE

8 v.

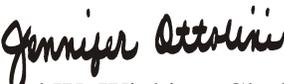
9 KEVIN CHAPPELL et al,
10 Defendant.
_____ /

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

13 That on February 26, 2013, 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 Terence A. Burton P58217
18 San Quentin State Prison
19 San Quentin, CA 94974

20 Dated: February 26, 2013


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