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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DIWON WHITE,

No. C-14-1958 EMC (pr)

Petitioner,

v.

**ORDER OF DISMISSAL**

JEFFREY BEARD,

Respondent.

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Petitioner, a prisoner incarcerated at Folsom State Prison, has filed a petition for writ of habeas corpus to challenge his conviction from Contra Costa County Superior Court in the mid-1990s. The petition is not his first federal habeas petition concerning that conviction. His earlier habeas petition in *White v. Pfler*, No. C 00-2298 MHP, was dismissed as untimely on January 11, 2011.<sup>1</sup> No appeal was taken from that dismissal.

A second or successive petition may not be filed in this Court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). This rule even applies when the previous petition was dismissed as barred by the statute of limitations which constitutes a disposition on the

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<sup>1</sup> The orders in the 2000 case did not identify the particular crime of which Petitioner had been convicted. The Court has used the following information to determine that the present case and the 2000 case pertain to the same conviction: (a) the petitioner in each case has the same CDCR number, (b) both cases challenge a conviction from Contra Costa County Superior Court, (c) both cases identify the California Court of Appeal's decision as having been issued in 1995, and (d) the California court website lists only one appeal from this prisoner having been decided in 1995, *People v. White*, Cal. Ct. App. No. A065113.

1 merits. *McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009); *Murray v. Greiner*, 394 F.3d 78, 81  
2 (2d Cir. 2005).


3           Petitioner has not obtained an order from the Ninth Circuit permitting the filing of a second  
4 or successive petition. This Court will not entertain a new petition from Petitioner until he first  
5 obtains permission from the Court of Appeals for the Ninth Circuit to file such a petition. This  
6 action is **DISMISSED** without prejudice to Petitioner filing a petition in this Court after he obtains  
7 the necessary order from the Court of Appeals for the Ninth Circuit.

8           If Petitioner wants to attempt to obtain the necessary order from the Ninth Circuit, he should  
9 file an “Application For Leave To File Second Or Successive Petition” in the Ninth Circuit (at 95  
10 Seventh Street, San Francisco, CA 94103). A copy of the form application is enclosed with this  
11 order for his convenience.

12           The Clerk shall close the file.

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14           IT IS SO ORDERED.

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16           Dated: August 28, 2014

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19           EDWARD M. CHEN  
20           United States District Judge  
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