

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER HONESTO,
Petitioner,
v.
DERRAL ADAMS, Warden,
Respondent.

No. C 14-2628 NC (PR)

**ORDER OF DISMISSAL; GRANTING
LEAVE TO PROCEED *IN FORMA
PAUPERIS***

(Docket No. 6)

United States District Court
For the Northern District of California

Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has also filed an application to proceed in forma pauperis.

Petitioner filed a previous petition for writ of habeas corpus with this Court, challenging the same conviction and sentence. See Case No. C 06-0308 JF (PR). The Court dismissed the petition as untimely and entered judgment on March 7, 2011. This Court and the United States Court of Appeals for the Ninth Circuit denied a certificate of appealability. The United States Supreme Court denied petitioner’s petitions for writ of certiorari and rehearing.

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as petitioner’s prior federal habeas petition. A 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 petitioner 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. The petition is accordingly **DISMISSED** without prejudice to refile if petitioner obtains the necessary order.

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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. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). Consequently, no certificate of appealability is warranted in this case.

Petitioner's motion for leave to proceed in forma pauperis, (Docket No. 6), is GRANTED.

The Clerk is directed to enter judgment and close the file.

IT IS SO ORDERED.

DATED: July 15, 2014


NATHANAEL M. COUSINS
United States Magistrate