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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUCHELL CINQUE MAGEE,
Petitioner,

v.

J. SOTO,
Respondent.

Case No. [15-cv-5234-TEH](#)

ORDER OF DISMISSAL

United States District Court
Northern District of California

Ruchell Cinque Magee, a prisoner at California State Prison - Lancaster and a frequent litigant in this Court, has filed a second or successive pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. He seeks to proceed in forma pauperis under 28 U.S.C. § 1915. Docket No. 5. Petitioner has also filed a motion to disqualify the undersigned judge. Docket No. 2.

I

This instant petition challenges Petitioner's 1975 conviction and life sentence from the Santa Clara Superior Court. His first federal Petition challenging this conviction and sentence was denied on May 10, 1995. See Magee v. Marshall, No. C-93-3637 DLJ, Docket No. 42. Petitioner has since filed many federal habeas and civil rights actions attacking the same conviction. On August 19, 2011, this Court dismissed as successive his most recently filed habeas petition challenging this conviction. See Magee v. Smith, No. C-11-2810 TEH, Docket

1 No. 6.


2 A second or successive petition may not be filed in this
3 Court unless Petitioner first obtains from the United States
4 Court of Appeals for the Ninth Circuit an order authorizing this
5 Court to consider the petition. See 28 U.S.C. § 2254(b)(3)(A).
6 Petitioner has not obtained such an order from the Ninth Circuit.
7 Accordingly, this Petition is DISMISSED without prejudice to
8 refiling if Petitioner obtains the requisite Order.

9 II

10 For the foregoing reasons, Petitioner's petition for writ of
11 habeas corpus is DISMISSED without prejudice to refiling if
12 Petitioner obtains the requisite Order from the Ninth Circuit.
13 Petitioner's motion to disqualify the undersigned is DENIED as
14 frivolous and meritless.¹ Docket No. 2. Petitioner's motion to
15 proceed in forma pauperis is GRANTED. Docket No. 5. Because
16 reasonable jurists would not find the result here debatable, a
17 certificate of appealability ("COA") is DENIED. See Slack v.
18 McDaniel, 529 U.S. 473, 484-85 (2000) (standard for COA). The
19 clerk is directed to terminate all pending motions as moot and
20 close the file.

21 IT IS SO ORDERED.

22 Dated: 12/08/2015

23 
24 THELTON E. HENDERSON
25 United States District Judge

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27 ¹ A majority of Petitioner's cases seek to disqualify the presiding
28 judge. Petitioner recently filed a case and sought to disqualify
all judge in the Central District of California. See Magee v.
Soto, No. C-15-3289 TEH.