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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

JAMES EVANS,
Plaintiff,
v.
LAURIE SMITH,
Defendant.

Case No. [16-cv-01157-LB](#)

ORDER OF DISMISSAL
[Re: ECF No. 5]

James Evans, currently incarcerated at the Santa Clara County Jail, has filed this *pro se* action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to proceed before a magistrate judge. (ECF No. 7.)¹ In his petition, Mr. Evans challenges his 2005 conviction and sentence from the Santa Clara County Superior Court.

Mr. Evans is currently incarcerated on a 2015 conviction, and that his sentence on the 2015 conviction was affected by the existence of the 2005 conviction and/or sentence. (ECF No. 8 at 1, 4.) He filed an appeal from the 2015 conviction, and that the appellant's opening brief in that appeal was filed on May 2, 2016. *See People v. Evans*, Cal. Ct. App. Case No. H042298 (docket sheet available at <http://appellatecases.courtinfo.ca.gov>.) This court does not read the petition in this action to be a challenge to the 2015 conviction, as the petition is clearly marked as challenging

¹ Citations are to the Electronic Case File ("ECF"); pin cites are to the ECF-generated page numbers at the tops of the documents.

1 the 2005 conviction. (ECF No. 5 at 1.) If Mr. Evans wishes to challenge his 2015 conviction, he
2 may file a separate petition for writ of habeas corpus in this court, but not until after his state court
3 remedies are exhausted.

4 The habeas petition in this action is not Mr. Evans' first federal habeas petition concerning his
5 2005 conviction and sentence. His first federal habeas petition challenging that conviction and
6 sentence, *Evans v. Gipson*, No. C 11-3129 YGR, was dismissed on September 12, 2012, as
7 untimely. No appeal was taken from the dismissal of that habeas petition.

8 A petitioner generally may not file more than one habeas petition in federal court to challenge
9 a state court conviction/sentence. A second or successive habeas petition to challenge a conviction
10 and/or sentence may not be filed in this court unless the petitioner first obtains from the United
11 States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the
12 petition. 28 U.S.C. § 2244(b)(3)(A).

13 Mr. Evans has not obtained an order from the Ninth Circuit permitting the filing of a second or
14 successive habeas petition. This court will not entertain a new habeas petition from Mr. Evans
15 challenging the 2005 conviction and/or sentence until he first obtains permission from the Ninth
16 Circuit to file such a petition. This action is DISMISSED without prejudice to Mr. Evans filing a
17 second or successive habeas petition in this court to challenge the 2005 conviction and/or sentence
18 after he obtains the necessary order from the Ninth Circuit.

19 If Mr. Evans wants to attempt to obtain the necessary order from the Ninth Circuit, he should
20 file an "Application For Leave To File Second Or Successive Petition" in the Ninth Circuit (at 95
21 Seventh Street, San Francisco, CA 94103). A copy of the form application is enclosed with this
22 order for his convenience.

23 The clerk shall close the file.

24 **IT IS SO ORDERED.**

25 Dated: May 16, 2016



LAUREL BEELER
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES EVANS,
Plaintiff,
v.
LAURIE SMITH,
Defendant.

Case No. 3:16-cv-01157-LB

CERTIFICATE OF SERVICE

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

That on May 16, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Evans
F-06497 - Jail CLH006 - 16001590
Santa Clara County, Main Jail North
150 West Hedding St.
San Jose, CA 95110

Dated: May 16, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable LAUREL BEELER